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RIGHTS OF THE CHILD

Sale of children

Report submitted by Mr. Vitit Muntarbhorn, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1992/76

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Introduction

1. The mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography was first created by the Commission on Human Rights in 1990 by resolution 1990/68, for one year. By Economic and Social Council decision 1990/240 the mandate was confirmed and extended to cover a period of two years. Accordingly, the Special Rapporteur submitted his annual reports (E/CN.4/1991/51 and E/CN.4/1992/55) to the Commission on Human Rights at its forty-seventh and forty-eighth sessions. In 1992, the Commission renewed the mandate for a further period of three years, under resolution 1992/76, which was approved by the Economic and Social Council in decision 1992/244 of 20 July 1992. The present report covers the period December 1991 to November 1992.

2. During the period year the Special Rapporteur carried out one country visit, which is reflected in the addendum to the present report (E/CN.4/1993/67/Add.1). At the kind invitation of the Australian Government, the Special Rapporteur visited Australia in October 1992. Although he had also wished to carry out during the year a visit to one other country in another region of the world (and of another level of economic development) to illustrate the fact that the issues under the mandate concern both developing and developed countries, it was not possible to organize the other visit due to constraints of time and resources. However, in the next year it is hoped that other visits will be possible along these lines.

A. Considerations of a general nature

3. As demonstrated in previous reports of the Special Rapporteur, the issues of the sale of children, child prostitution and child pornography are universal: they are found in all countries, although the typology and degree may vary from country to country. Previous reports addressed various considerations including the linkage between supply and demand, criminality, the chain effect, and the need for a pluridisciplinary approach to tackle the ensuing problem. During 1992, new angles of these problems came to light which call for greater attention. These include the following.

Transnationalization

4. The increasing transnationalization of the problem of the sale of children is most disquieting. When the situation seems to improve in one country, others seem to arise in another part of the world, thereby perpetuating and aggravating the issue. For example, while many of the countries which had previously supplied children for inter-country adoptions have taken more stringent measures to control or prevent such adoptions for fear of commercialization, other countries have emerged as a potential market for new supplies of children. The case of the Eastern European countries is pertinent in this regard.

5. On the issue of child prostitution and child pornography, there are equally worrying concerns. Sex tourism has become more widespread in recent years across all continents. Paedophiles from several developed countries continue to visit developing countries to victimize children. Two issues invite further debate and action: the responsibility of consumers or

customers, including those possessing child pornography, and the possibility of extending national jurisdiction to cover crimes committed abroad by a country's nationals.

6. On another front, the web of transnational trafficking in children between developing countries and developed countries, between the developing countries themselves, and between the developed countries themselves is becoming more evident.

7. At times, these problems are linked with abduction and disappearances of children across frontiers. In the absence of international and bilateral agreements to facilitate the tracing and return of these children, the scenario remains intractable and opaque.

Technology

8. Just as new technology may help to protect children worldwide, it also may be used to abuse children. This is particularly relevant to certain practices akin to the sale of children. Notably, while in vitro fertilization and surrogacy may at times be justified for humanitarian considerations if carried out in accordance with ethical principles, they are giving rise to increased commercialization, paralleling a situation of sale.

9. The new technology which has rendered possible organ transplants can also have horrific results where children and others are subsumed by a trade in organs.

10. From another angle, technological advances may render the problem of child exploitation more extensive, instantaneous and elusive, all at the same time. This is exemplified by the spread of telephone and computer facilities which may be used for the purposes of child prostitution and child pornography.

Industrialization

11. While the process of industrialization may bring benefits in terms of economic development, it may lead to distortions if measures are not taken to protect children and their families and to distribute income and resources in keeping with aspirations of equity.

12. The plight of child labourers in many communities is visibly linked with the shift towards an industrial society. In such settings, it is the informal sector and small-scale industries which are often beyond the reach of the law and law enforcement. Meanwhile, the growth of the service sector, including hotels and entertainment, is at times linked with activities leading to child prostitution and child pornography.

Security

13. While the threats to global security have subsided on many fronts, particularly with the passing of the cold war, several conflicts remain or have developed, particularly at the national level; these have interplay with ethnic differences.

14. Children are often used in these conflicts as porters and soldiers to supply arms to the combatants and/or to fight, practices akin to the sale of children in order to exploit their labour. Children are at times the victims of warfare and armed conflicts which result in deprivation and displacement and ultimately lead to instances of commercialization, in the sense that orphans and abandoned children of war may become candidates for placements and adoptions which may be linked to commercialization.

15. At the personal and family levels, physical and psychological security cannot be truly ensured unless basic needs are satisfied and the quality of life is promoted. The strategy to eradicate poverty and to promote development is thus all-important to prevent child abuse and exploitation. However, one may add that poverty should not be a pretext for child exploitation; even in the poorest of settings, there is and can be no justification for selling children into the variety of situations covered by this mandate.

Crime and corruption

16. The sale of children is, sadly, the product of crimes. Criminal elements vary from small-scale operations to large-scale multinational networks. These also shed new light on an old problem. As will be seen below, although child labour has been with us from time immemorial, criminal syndicates and individual exploiters are now manipulating children in new ways as instruments of crime. Notably, the use of children to sell drugs, to steal and to commit other offences is part of a wide range of abuses which have emerged in recent years.

17. Much of this is linked with corruption within national systems and the fact that many elements of the law enforcement authorities collude actively or passively with criminal elements. This is compounded by the fact that although all countries have laws to protect children, there is a huge gap between those norms and current practices: many countries suffer from poor law enforcement. Child abuse and exploitation are often the product of such deficiency and related vested interests. The seemingly easy option of reforming the law will never suffice unless the issues of high standards of law enforcement and effective measures to counter criminality and corruption are also addressed.

18. In federal systems, a key question for the future is the liaison between the jurisdiction of federal authorities and that of State and local authorities. This is all the more important as local authorities are at times ineffective and need to be bolstered by federal measures.

Discrimination

19. In several settings children are discriminated against when compared with adults. They are seen as tools for commercialization from which adults reap the rewards.

20. Rampant discrimination against the girl child aggravates the struggle to prevent child abuse. Many societies display historical injustices, traditional taboos and sexual stereotypes. The situation is compounded by the vestiges of a colonial system, as well as a class or caste structure that is pervasive.

21. While laws and policies may help to eradicate such practices, it is long-term community consciousness, education and mobilization to promote behavioural change that count, precisely because age-old practices do not disappear overnight.

B. Methodology

22. The study examines three specific issues: the sale of children, child prostitution and child pornography. Under the heading "sale of children", four topics are dealt with: the sale of children in relation to adoptions, child labour exploitation, human organ transplantation, and other forms of sale.

23. This is the third report to be submitted by the Special Rapporteur. The second report (E/CN.4/1992/55 and Add.1), submitted at the beginning of 1992, provided a substantive analysis of the issues at stake, supported by the replies to an extensive questionnaire sent to both Governments and the non-governmental sector in 1991, in addition to the findings of field trips to the Netherlands and Brazil. The process of communicating with Governments directly to request action on human rights violations was also initiated.

24. During the course of 1992, the Special Rapporteur established direct coordination with Governments and the non-governmental sector to seek updated information on the issues under the mandate. He also established closer contact with various intergovernmental organizations, including UNICEF, WHO, ILO and INTERPOL to share information.

25. The Committee on the Rights of the Child established under the Convention on the Rights of the Child invited the Special Rapporteur to exchange views and consolidate action in regard to children in armed conflicts. The Working Group on Contemporary Forms of Slavery and the Sub-Commission on Prevention of Discrimination and Protection of Minorities also established key interchanges with the Special Rapporteur throughout the year. Many non-governmental organizations and individuals contributed information consistently as a basis for this study. Special thanks are conveyed by the Special Rapporteur to both the governmental and the non-governmental sectors which have provided complementary support in this regard.

26. In regard to communications with Governments on allegations of human rights violations during 1992, the Special Rapporteur contacted the

Governments of Austria, Germany, Saudi Arabia, Thailand and the United Arab Emirates for clarifications and responses. The interchanges are provided later in this report in the section entitled "Communications".

I. SALE OF CHILDREN

27. Various definitional issues concerning the words "sale" and "child" were discussed in the previous report, and it is not intended to examine them in depth here. Suffice it to note that the definition given in article 1 of the Convention on the Rights of the Child is as follows: "... a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".

28. The working definition adopted by this mandate for "sale of children" is "the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation". Although the term gives rise to a variety of categories, the categorization adopted by this mandate is fourfold: adoption for commercial purposes, exploitation of child labour, organ transplantation, and other forms of sale. The last category has been interpreted under this mandate to include abductions and disappearances, and child soldiers. These are illustrative rather than exhaustive.

29. This report will not replicate many of the substantive issues already raised in the previous report. Rather, it will concentrate on new developments and information which came to the Special Rapporteur's attention during the reporting period.

A. Adoption for commercial purposes

30. The concept of adoption has been analysed as follows: "in a broad non-legal sense adoption may be defined as the institutionalized social practice through which a person, belonging by birth to one family or kinship acquires a new family or kinship ties that are socially defined as equivalent to biological ties which supersede the old ones, whether wholly or in part". 1/ In the legal sense, it implies that the adopted child becomes entitled to all the rights, including hereditary rights, to which the biological child would be entitled - "filiation".

31. Commercialization concerning adoptions has grown since the end of the Second World War. This coincides with the decline in the number of children available for adoption in developed countries and the search for children in developing countries. Demand from developed countries and supply from developing countries are part of a transcontinental network of inter-country adoptions.

32. A key issue is that in several countries the procedures for dealing with inter-country adoptions are inadequate. Sometimes there is no effective central authority in either the sending or the receiving country, and where such authorities exist, there is insufficient cooperation to regulate the process at the bilateral and international levels. This is rendered more complicated by the operations of private independent adoption agencies which are not registered with the appropriate administrative or judicial

authorities. At times, their operations as intermediaries are highly commercialized and lead to a sale of children. There are also linkages with vested interests in the law enforcement sector.

33. During the reporting period, other concerns emerged in relation to abductions and disappearances of children, falsification of birth documents so as to distort the child's parentage, and the commercialization of in vitro fertilization and surrogacy which can be tantamount to a sale of children. These are illustrated in the section on "National developments" below.

International developments

34. The Convention on the Rights of the Child encapsulates many primary principles concerning adoptions. It calls for authorization of the adoption by competent authorities, exploration of adoption possibilities in the country of origin before examining the potential of inter-country adoption ("subsidiarity"), and action against "improper financial gain" (Art. 21). The predominant principle is the best interests of the child. Over 100 countries are now parties to this Convention; those countries which have not yet signed should be encouraged to do so. The newly established Committee on the Rights of the Child will also play a key role in monitoring all aspects of children's rights, including those concerning adoption.

35. This initiative has been bolstered by the drafting of a new international convention on inter-country adoptions under the auspices of The Hague Conference on Private International Law. It posits the need for counselling facilities; assessment of the suitability of the adoptive parents; designation of a central authority in each State party to coordinate with the other States parties; accreditation of intermediary organizations without profit motives; and mutual recognition of foreign adoptions. 2/ The main trend is to regulate the operations of intermediaries, such as private adoption agencies, by ensuring that they are accredited and monitored by State authorities.

36. In addition, the Commission on Human Rights, by its resolution 1992/74, has now adopted a Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, annexed to that resolution, which was prepared by its Sub-Commission. Although the Programme of Action is not limited to sale by adoption, certain measures are most pertinent to the area. These include information campaigns to warn people about abuses; investigations to expose abuses; education to prevent, identify and expose abuses; improved legal measures and law enforcement, particularly to curb sale and trafficking by clients and intermediaries; social measures and development assistance for communities; rehabilitation and reintegration of children who have been victims of abuse; international coordination and exchange of information with appropriate data banks. It highlights the following premises in regard to adoptions: inter-country adoptions should only take place through competent, professional and authorized agencies in both the country of origin and the receiving country; procedures for child birth registration and consent or renunciation by parents should be regulated by law; alternatives to inter-country adoptions, including support services to parents so as to enable them to retain their children, foster care and local adoptions, should be explored.

37. These proposals have been reinforced by pronouncements from the non-governmental sector. At the 1992 Regional Expert Meeting on Protecting Children's Rights in Inter-country Adoptions and Preventing Trafficking and Sale of Children organized by Defence for Children International in Manila, the following needs for international action were voiced: 3/

(a) Emphasis on the subsidiary role of inter-country adoptions; local alternatives should be explored first;

(b) Reduction of poverty;

(c) Reduction of foreign debts;

(d) Proposal of a code of conduct for international adoption agencies with the accent placed on ethical conduct;

(e) Stricter standards on accreditation of adoption agencies in the source and receiving countries;

(f) Review of financing systems;

(g) Increased international monitoring;

(h) Support for appropriate legislation and the draft convention on inter-country adoptions, with more emphasis on the need to strengthen the family of origin.

38. In so far as the transfer of children is linked with abductions, The Hague Convention on the Civil Aspects of International Child Abduction of 1980 assists in tracing abducted children and facilitating their return. The Convention allows police to intervene where the child is kidnapped, even in the absence of a court decision. Here again, there is a call for those countries which have not acceded to this Convention to do so and maximize transfrontier cooperation to help abducted children.

National developments

39. At the 1992 Regional Expert Meeting mentioned above (see para. 37), certain measures were called for to improve performance at the national level, including the following:

(a) Provision of social services to prevent family disintegration;

(b) Support to enable children to live with the biological family or, failing that, within the extended family;

(c) Exploration of domestic adoption prior to inter-country adoption;

(d) Improvement of legislation to promote child welfare and monitoring;

(e) Obligation to use legal procedures and court procedures in a case where ties between biological families are to be dissolved;

(f) Permission granted only to licensed agencies to act as intermediaries for adoptions;

(g) Better education and advocacy on behalf of children.

40. On many fronts, countries have adopted stricter measures to prevent commercialization and promote local adoptions.

41. In Asia, 1992 witnessed an amendment to the Adoption Ordinance in Sri Lanka. It states that: "An adoption order shall be made in favour of any applicant who is not a citizen of Sri Lanka and not domiciled or resident in Sri Lanka if no other [person] resident and domiciled in Sri Lanka has applied to adopt the child in respect of whom the application is made". The International Herald Tribune of 30 November 1992 reported that the Republic of Korea indicated that it would phase out inter-country adoptions by 10 to 20 per cent over the next five years and ban it from 1996.

42. Earlier, Malaysia had passed the Child Protection Bill with a sanction against child trafficking. Viet Nam had also passed in 1991 the Law on Protection, Care and Education of Children in Viet Nam, whose article 7 provides that: "The handing over and receiving of children into adoption shall have to be conducted in accordance with the law, ensuring that they shall receive a good upbringing, care and education. In all cases, the transfer of children to or back from another country shall be carried out in accordance with the law".

43. In Central and South America, many countries with legislative loopholes concerning inter-country adoptions undertook to overcome them. Chile revised its adoption law in the light of the Convention on the Rights of the Child. Brazil moved towards various measures to check inter-country adoptions: the immigration services of those countries whose nationals wish to adopt Brazilian children must send their respective governmental authorities a copy of the passport of the child adopted in Brazil to be forwarded to their Brazilian counterparts, and foreigners wishing to adopt Brazilian children must have obtained authorization from their Government beforehand; a special visa would then be issued by the Brazilian authorities to guard against malpractices.

44. In Europe, after an outflow of children in the wake of the fall of the Ceaucescu regime in Romania, the movement was stopped in 1991 with the adoption of a new law, and a special committee was set up to supervise adoptions; there had been fears of commercialization. Moreover, many of the children taken out in the initial phase had physical and psychological handicaps which posed problems in their adaptation to new countries. The clamp-down in Romania attested to the positive results of "political will", with the law used as an effective tool in that context. 4/ The door became half-open again in 1992, notably with a special agreement with France to permit inter-country adoptions between the two countries, as reported in La Livre Belgique of 16 July 1992. It was reported in the Journal de Genève on 19 July 1992 and elsewhere 5/ that a parallel situation had arisen in Albania, followed by a clamp-down by the authorities.

45. In other national contexts, the following situations remain disturbing.

46. The United States of America is generally seen as a key receiving country. The fact that there is no federal law on adoptions and that state laws prevail makes it difficult to ensure that inter-country adoptions are not commercialized. However, the federal authorities are able to establish a limited degree of surveillance through their immigration and consular channels.

47. The position has been described as follows:

> "... under the existing law, oversight of this process is left to the States (except for matters directly pertinent to immigration considerations). This results in a patchwork quilt of regulation or lack of regulation that permits unlicensed 'adoption facilitators' in the United States to broker international placements of children, places the burden of evaluating the legitimacy of the adoption on United States consular personnel in foreign embassies and gives State courts called upon to finalize the adoption in the United States little information on which to base their conclusions that the process was legitimate." 6/

48. There are also allegations that the birth documents of some of the children from South America adopted by United States couples have been falsified so as to leave out the names of the biolgical parents, thereby showing only the names of the adoptive parents as the natural parents.

49. At the local level, it was reported in the Saginaw News of 18 March 1992 that a court had found an adoption lawyer operating in Texas guilty of buying children from prison-bound prostitutes and profiteering from adoptive parents (some US$ 11,000 for each baby).

50. There is also a linkage with child kidnapping. According to one non-governmental report,

> "the latest trend is abductors or kidnappers posing as State officials - social workers, protective services authorities, etc. - to compel new parents to hand over their new born. The general public has no way of knowing what constitutes valid identification of social service workers, how far their authority extends, as it differs from State to State. ... The 'undue burden' of proving parental fitness rests upon the parent and there is no adequate 'due process' for parents or children involuntarily or voluntarily surrendered to the foster care system under the Child Welfare Department, and the Department's authority and actions were seldom questioned until recent scandals about child deaths." 7/

51. There have also been reports of hospital baby switches, with the following dilemma: "If any time goes by before an abducted or kidnapped child is found to be adopted, the courts will not order return of the child to his rightful parents, alleging it is in the child's best interests to remain in the home it is now familiar with." 8/

52. The secret nature of adoptions is an obstacle to those wishing to substantiate claims that adoption birth records have been falsified. The

adoption of a model adoption act would have ensured that adoption birth certificate records would be accessible in every State; however, such an act has not been passed.

53. There have also been disputes concerning whether expectant mothers give up their children voluntarily for adoption. In one recent case, reported in the San Diego Union Tribune of 27 April 1992, this was questioned, and as the woman was Mexican, there was the possibility that this was linked with smuggling pregnant women into the United States to give birth.

54. In fact, transnational trafficking of children between Mexico and the United States has been reported for some time. This is linked with abduction by divorced parents who are not given custody of the children by American courts and who move the children to Mexico to avoid detection. According to the Los Angeles Times of 28 January 1991, "a non-custodial parent removing a child from the custodial parent is a crime in many United States states, but in Mexico, it is not".

55. According to the National Centre for Missing and Exploited Children, some 7,000 children have been abducted by parents in recent times.

56. The circumstances indicate the need for more federal supervision of inter-country adoptions with proper accreditation of adoption agencies, improved state laws to curb commercialization, and agreements between the United States and its neighbours and other source countries to follow the new international convention on inter-country adoptions and The Hague Convention on Child Abductions to protect children from exploitation and abduction. 9/ These need to be coupled with central registries in the United States and the other countries concerned to track children entering and exiting from such countries.

57. The new composition of Eastern Europe and the Commonwealth of Independent States has highlighted new dilemmas. Commercialization of inter-country adoptions has reached the doorsteps of Poland and the Russian Federation. The following comment, from the New York Times of 19 April 1992 on the Polish situation, deserves note:

> "Some young mothers are being pressed to sign away the rights to their children. In some cases, officials say, poor pregnant women give up their babies in exchange for money directly. But most often, they say, administrators of homes for single mothers, as well as the attorneys involved in the adoption, receive up to tens of thousands of dollars."

Receiving countries of the adopted children include the United States, France, Italy and Sweden. Parallel reports of high sums demanded by intermediaries for the adoption of Russian children (between US$ 10,000 and US$ 50,000 per child) have also been reported recently.

58. Many developed countries, such as Canada and Australia, acknowledge that while there are several laws at the State level to prevent commercialization in adoptions, difficulties are posed in inter-country adoptions where the adoptive parents from these countries finalize the adoption process in the child's country of origin by means of a court order. It is interesting that

in Canada's reply to the Special Rapporteur's questionnaire, received in 1992, it is noted that, despite State mechanisms to control adoptions, there is less control in the case where the adoption order is granted abroad. Where Canadian citizens are able to adopt privately in a foreign country, either personally or with the help of an intermediary, improprieties may arise. The reply states:

> "It has been reported that Canadians have given money to agents and/or birth parents in foreign countries in connection with adoptions. Provincial and territorial child welfare authorities have no jurisdiction over the action of Canadian adoptive parents or their agents abroad".

59. There is as yet no federal criminal code to deal with the sale and trafficking of children so as to apply to Canadians operating outside Canada. Parallel considerations face Australia, and these are seen in the country study provided in the addendum.

60. In many developing countries in Asia, the sale of children still exists for local or neighbouring markets despite the existence of laws to protect children. A letter from the Government of China in October 1992 observes the following:

> "Since in some regions the masses still live in poverty and the traditional attitude of exalting men and disdaining women inherited from feudal times still persists, particularly in agricultural areas, the buying and selling of children in isolated spots has not yet vanished entirely".

61. Reports from Thailand and Malaysia indicate a continuous process of children abducted from Thailand and sent to Malaysia, where there is a shortage of children in some quarters. The persons who purchase these children pass them off as "natural children" rather than "adopted children".

62. In India, where the courts have stepped in to promote local adoptions as opposed to inter-country adoptions, a comprehensive federal law on adoptions is desired.

63. In Central and South America, although there have been many legislative improvements in recent years, initiatives for tightening the legislative loopholes are still awaited in a number of countries, including Guatemala and Peru. In recent times there have also been reports of disappearances of children from Honduras, possibly with a view to inter-country adoptions through falsification of birth certificates. In 1992, a number of lawyers and child care centres were the subject of a judicial inquiry concerning infants stolen and sold to foreign couples. Other disappearances of children reported during the period concerned a variety of countries, including Colombia, Bolivia, Panama, Brazil and Mexico.

64. Although the African region is low down on the list of areas where inter-country adoptions are popular, there have been sporadic reports of children trafficked and sold to others. These include Mozambican refugees sold to other Africans. In Côte d'Ivoire, some traditional practices induce parents to discard their children. In the Agni Sanwi group, for example, religious

practices compel parents not to keep their tenth child. In Burkina Faso, there have also been reports of children being abandoned and clandestinely adopted by foreigners.

65. The advent of in vitro fertilization and surrogacy has added a new dimension to the problem of the sale of children. Although these practices do not fall neatly into the rubric of adoptions, parallel commercialization may arise, resulting in abuses.

66. A report in the Los Angeles Times of 21 July 1992 indicated that many infertile Japanese couples are hiring Asian-American women to bear their children, sometimes for as much as US$ 45,000. For a reference to a similar situation, see the Australian country study found in the addendum.

B. Exploitation of child labour

67. It is the exploitation of child labour rather than child labour per se which is objectionable. Extensive information on this subject has been gathered by the International Labour Organisation, and it is not the intention of the Special Rapporteur to duplicate this work. Rather, the approach is to recognize that exploitation of child labour is a form of sale of children, and to highlight new aspects which came to light in 1992.

68. On the whole, it may be said that all the countries studied by the Special Rapporteur have laws and regulations on child labour, particularly in the industrial sector. The minimum age for employment varies between 12 and 18. Some countries are also parties to the key convention of the International Labour Organisation on this subject, namely, the Minimum Age Convention, 1973 (No. 138).

69. More often than not, the exploitation arises from a variety of root causes, including poverty, socio-economic disparities, migration, gender discrimination and criminality. Here again, the premise of the Special Rapporteur is that these should not be seen as pretexts to justify child labour exploitation. The strategies to deal with the problem will have to be interdisciplinary and multi-sectoral.

International developments

70. The International Labour Organisation has evolved a series of conventions and recommendations on the exploitation of child labour. Convention No. 138 as mentioned above, uses 15 as the basic minimum age, although reductions to 14 may be possible in developing countries. These have been reinforced by the Convention on the Rights of the Child which calls for stipulation of a minimum age, regulation of working conditions, and appropriate penalties for exploitation. This has been enhanced by the recent International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which also protects those in irregular situations, such as those employed without proper documents in another country; they retain their rights vis-à-vis their employers, even in such a context.

71. The Sub-Commission on Prevention of Discrimination and Protection of Minorities and its Working Group on Contemporary Forms of Slavery have now

finalized the draft programme of action for the elimination of the exploitation of child labour which deserves to be implemented fully at all levels. Its premise converges with that tendered by this mandate:

> "Poverty is often the main cause of child labour, but generations of children should not be condemned, until poverty is overcome, to exploitation. Underdevelopment cannot justify exploitation of which children are the victims. The Governments concerned and the international community as a whole must not wait for development problems to be adequately solved before attacking the phenomenon of the exploitation of child labour. ...
>
> High priority should be given to the elimination of the most odious or degrading forms of child exploitation, in particular child prostitution, pornography, the sale of children, the employment of children in dangerous occupations or for enforced begging and debt bondage". (E/CN.4/Sub.2/1992/34, annex I, paras. 2-3.)

72. As the draft programme of action notes, the question of children used as instruments of crime and abuse needs to be tackled: "The international community should place particular emphasis on the new phenomena of the exploitation of child labour, such as the use of children for illegal, clandestine or criminal purposes, including their implication in the narcotic drugs traffic or in armed conflicts or military activities" (para. 4).

73. The draft programme of Action advocates a number of measures, inter alia:

(a) Information campaigns to raise consciousness of the problem;

(b) Educational and vocational training to prevent child labour exploitation;

(c) Social action to help families and their children;

(d) Development aid;

(e) Stipulation and application of labour standards;

(f) The duties of States to adopt appropriate policies and programmes, e.g. provision of primary education for all;

(g) Support from international agencies.

74. In terms of programming, it is interesting that the International Labour Organisation is placing more emphasis on Africa than previously. There is also a project to probe the practices of the hotel industry and tourism generally which may give rise to several forms of child labour, including those dealt with later on in this study, namely, child prostitution and child pornography.

National developments

75. While laws on child labour are ubiquitous, the enforcement of such laws is often amiss. Instances of exploitation are to be found in both developing and developed countries, although the extent varies according to the region. Quantitatively, Asia and South America figure high in the number of children in these difficult situations.

76. The year 1992 witnessed many developments. Although the most recurrent picture of child labourers in Asia is probably that of children in sweatshops and illegal premises, the scope has become much broader; it may be seen from the angle of children used as instruments of crime. The following observation from an international seminar deserves note:

> "The situation in the Asian region of the instrumental use of children in criminal activities, included, as in other parts of the world, their forced recruitment into sexual slavery, the sale of children under the cover of inter-country adoption and for organ transplants, the use of children in marketing drugs, street children trained by criminal elements to steal and commit other crimes, and handicapped children press-ganged by syndicates to beg on the streets. An additional problem existed in the Asian region which was one of gender biases and cultural practices which contributed to child exploitation". 10/

77. Several reports of children used in camel races came to light. This is linked with the trafficking and abduction of children, particularly from India, Pakistan and Bangladesh, to the Gulf countries. The Special Rapporteur communicated directly with the Governments of the United Arab Emirates and Saudi Arabia on this issue. The responses of these Governments are provided in the section on "Communications" below.

78. The following descriptions, drawn from the Asian and European press, are illustrative of the problem at hand:

> "there may be hundreds more children from India, as well as from Pakistan, Bangladesh, Sri Lanka, Tonga and Malaysia who have already been bought. ... The demand is for young, light-weight children. The lighter the child, the faster the camel can run. For the races, young children are tied to the camels. The wails and screams as the terrified children pummel the camels and hit out with their feet frighten the camels and make them run faster. ... Children say they were whipped and given electric shocks before mounting the camels. Some are injured or maimed in the races and given cash compensation".

79. Instances of forced marriages recur in various countries, including India and the Islamic Republic of Iran. These take place despite laws to the contrary; for example, in India, this is banned by the Child Marriage Restraint Act 1929. There are also reports of elderly men from various countries of the Middle East who travel to South Asia in search of young brides. The parents of the latter are paid a sum to convey the girls to the customers. Where court action has taken place to prosecute the latter, difficulties arise when the girls refuse to testify or change their testimonies for fear that their action could incriminate their parents.

80. Despite laws to abolish bonded labour in South Asian countries, the practice persists. However, the move to abolish bonded labour is gathering momentum. In 1992 a number of Indian bonded child workers rallied to urge the Indian Government to eradicate it in the export-oriented carpet weaving industry. In recent years, the Bonded Labour Liberation Front also claims to have freed some 40,000 bonded labourers, including child labourers, mainly of the "untouchables" caste. However, mere release is not sufficient, as noted by this comment: "Freedom alone is not enough for men, women and children who have spent their lives in bondage. Being unable to cope with freedom, there is a tendency for them to return to bondage as it is the only thing they know". 11/ This implies the need for support facilities and alternative forms of livelihood.

81. One of the most interesting initiatives to overcome bonded labour is to seek the cooperation of the private sector. In 1992, a non-governmental organization, the South Asian Coalition on Child Servitude (SACCS), and the Carpet Export Promotion Council and All India Carpet Manufacturers Association reached an agreement to send home children from Nepal used in the Indian carpet industry and end recruitment of those under 14. 12/ However, they were unable to agree on whether to affix the label "no child labour" on the carpets made under their auspices. This would seem to be an innovative way to market a strategy to avoid use of child labourers.

82. On another front, it should be noted that India has set up a National Human Rights Commission with particular commitment to help vulnerable groups. This could be another avenue to help child labourers.

83. The continuing plight of the girl child in South Asia needs to be highlighted. Female foeticide has been banned by law, but socio-cultural prejudices remain. Girls also suffer because of fewer educational and occupational opportunities than boys. Many end up as domestics, while others are tricked into prostitution across the frontiers of Bangladesh, Nepal, India and Pakistan, despite laws and policies to the contrary.

84. The advent of the Bonded Labour Act 1992 passed in Pakistan with the intention of abolishing bonded labour is welcome. However, here again the issue revolves around law enforcement and strategies to counter the root causes of exploitation. Interestingly, vigilance committees of elected representatives, leaders of public opinion, lawyers and governmental officials have been set up as part of community mobilization against child exploitation. These are coupled with national policies and programmes to implement the 1990 World Declaration on the Survival, Protection and Development of Children.

85. Many of the problems facing children in India and Pakistan are also found in Nepal and Bangladesh. Of particular concern in the Nepali context is the plight of the girl child, as follows:

> "There are many cases of very young girls married off to very old men. Survey statistics in Nepal reveal that 40 per cent are married off before they reach the age of 16, and 10 per cent before the age of 10. The life of a buhari (daughter-in-law) is often made miserable by her cruel mother-in-law, and it is not long before she is a mother-in-law

> her elf and treats her daughter-in-law in the same way she was treated. ... In many cultural minority groups, young daughters are offered to the gods/goddesses, thereby becoming religious prostitutes. The badini of the Gandharva community, the deubi of the Tharu community and the jhuma of the Sherpa community are examples of this practice. Similarly, the dowry system has made a wretch of a life for thousands of girls, especially those living in the area near the Indo-Nepal border". 13/

86. In the Philippines, despite labour laws to the contrary, a number of children are exploited in various capacities. These range from girls used in the garment industry to boys used in sugarcane plantations. "In coastal areas like Palawan and Samar, the fishing industry controlled by Japanese business employ the Muro-ami fishing or deep-sea diving which takes in a significant number of children as divers". 14/ Their lives are at times endangered by the work. Meanwhile many street children are sexually exploited, as well as exploited for other criminal purposes.

87. In Thailand, despite the move towards stricter laws, the situation of child labourers remains serious. In 1992, the new Prime Minister stated his intention to eradicate child labour as a high priority of the Government. Police and labour inspectors continue to stage raids to release children from sweatshops, and tougher penalties have been imposed by law in recent years. Compulsory schooling is also being extended to nine years so as to provide a channel for keeping children in school rather than leaving them to the labour market after six years' education.

88. However, the realities remain a far cry from policy aspirations; a large number of children are still being exploited, principally by the informal labour market. The situation is closely linked with trafficking of children from neighbouring countries such as the Lao People's Democratic Republic, Myanmar, China and Cambodia, and with the large number of child prostitutes.

89. New information concerning child labour exploitation in China has come to light. The launch of the Special Economic Zones has attracted foreign investment and created rapid industrialization. Despite a 1988 Ordinance: Announcement of Prohibition of Child Labour Employment, there is a rise of child labourers, as seen in this observation:

> "Child labour concentrates mainly on the newly developed towns where the Central Government has difficulties in implementing the Law. Moreover, the problem of child labour is related to the issue of regional differences. Since the Open-Door policy shifted the emphasis on the development of coastal areas, it accelerates the spatial inequality between coastal urban and the inland rural areas. Thus child labourers are mainly found in Guangdong and they come from the poorer regions like the countryside of Hunan, Hubei and Guangxi". 15/

In the case of street children, their activities range from begging to flower selling.

90. On another continent, the United States exemplifies growing sensitivity concerning child labour in developed countries. The large number of children in sweatshops in the United States was noted in the previous report of the

Special Rapporteur. Increasing numbers of children are also being used in criminal activities such as to peddle drugs. The situation is rendered more complex by the large group of illegal migrant workers, including children from neighbouring countries.

91. Not only are penalties rare for child labour exploitation in such a context, but also children are ineligible for workman's compensation with few rights to claims for injuries. Thus, "it becomes cheap, very cheap to maim and injure the young". 16/ There is also a shortage of labour inspectors and the services are of a low quality in several states. "Wisconsin headed the list with an A minus ... Child Labour Programmes in Arizona, Minnesota, New Mexico, North Dakota, West Virginia, Wyoming, Iowa, Arkansas, Montana, Nevada, Vermont, Idaho, South Dakota, Texas and Utah were given Fs". 17/

92. Many of the transgressions committed against children in Central and South America were noted in the previous report of the Special Rapporteur. In particular, the plight of street children persists; at times there are physical attacks against them leading to deaths and injuries. These take place in countries like Guatemala, Colombia, Brazil and Peru.

93. The tragedy of children used in Peruvian gold mines has been documented recently; a number of graves with the bodies of infants have been found. The atrocities committed against them are manifold: "Because there are no legal restrictions, employers can compel youngsters to do domestic work in addition to working in the mines. The employer is free to mistreat, rape or even let the youngsters die out of neglect, should they try to flee". 18/

94. The spread of problems facing Brazil was displayed in the previous report of the Special Rapporteur and is very much part and parcel of political anomalies. Despite new laws to protect children, violations are rampant, especially with the huge number of children living in the streets. New transgressions which have come to light recently include the use of children to clear forests and to produce charcoal in Para, Mata Grosso and other regions (E/CN.4/Sub.2/1992/34, para. 52). Often the situation of these children and their families is akin to debt bondage.

95. Europe should not escape notice. A number of child workers have been identified in Portugal in such industries as shoe-making. 19/ In Spain, minors have been used in various drug-related activities. The situation is compounded by the presence of women trafficked from South America.

96. On the eastern front, the Russian Federation is facing an increasing number of children living in the streets, at times indulging in criminal activities. Other Eastern European countries face similar dilemmas.

97. In Africa, there are increasing reports of children used to commit theft, shoplift and market drugs. This is also related to the shift from rural employment to urban occupations which are at times enmeshed in crime.

98. Child labourers are reported in South Africa; these include children abducted from elsewhere and used as farm labourers. Other countries such as Burkina Faso, Côte d'Ivoire, Ghana, Kenya, Senegal and Sierra Leone also note an increasing presence of child labourers in urban areas as part of the shift

from agricultural rural life. Interestingly, in the case of Sierra Leone, one source of information notes that children are sold to Lebanon for child labour purposes, while local people may buy children to work as child slaves in urban centres. In Kenya, the large number of street children also implies that several are used to beg as part of gangs; a number are involved in sex and drug-related activities. The plight of children used as domestics is also reported from various countries, including Senegal.

99. In another part of the world - Australia - the linkage between children used in crimes has also become more evident. This is elaborated in the country profile in the addendum.

C. Organ transplantation

100. The issue of children sold for organ transplantation is without doubt the most sensitive aspect of the Special Rapporteur's mandate. The problem is all the more difficult owing to the debate concerning definitions, the advent of new technology and limited information.

101. According to the World Health Organization, the term "human organ" is understood to include "organs and tissues but does not relate to human reproduction, and accordingly does not extend to reproductive tissues, namely ova, sperm, testicles or embryos, nor is it intended to deal with blood constituents for transfusion purposes". 20/ What of the foetus? The shadow of commercialization looms over "human organ" transplants as well as all the areas excluded from the definition given.

102. The issue is being broadened in the context of *in vitro* fertilization and surrogacy, as they interrelate with those men and women who are willing to offer the services of their reproductive system to others for a price. Although the elements used in these instances do not fall neatly into the definition of "human organ" transplantation, the threat of commercialization should not be overlooked.

103. The concern surrounding organ transplants is due to the fact that demand exceeds supply; the shortage of available organs for transplants lends itself to abuse and commercialization. The scenario is all the more disconcerting due to the fact that much of the demand comes from developed countries, and there is the lure of remuneration for potential suppliers from developing countries. The problem may also be linked with abductions and disappearances, dealt with later in this report.

104. As the World Health Organization has observed and as cited in last year's report (E/CN.4/1992/55, para. 106):

> "A feature of organ transplantation since its commencement has been the shortage of available organs. Supply has never satisfied demand, and this has led to the continuous development in many countries of procedures and systems to increase supply. Rational argument can be made to the effect that shortage has led to the rise of commercial traffic in human organs, particularly in living donors who are unrelated to the recipients. There is clear evidence of such traffic in recent years, and fears have arisen of the possibility of related traffic in human beings".

International developments

105. Although there is no international instrument on the issue of human organ transplantation, the implication of the Convention on the Rights of the Child, which protects children's right to life and freedom from abuse and exploitation, is that the sale of children for organ transplants is totally illegal.

106. In 1991, WHO propounded a set of Guiding Principles on Human Organ Transplantation, differentiating between cadavers and living persons. 21/ Principle 1 of these guidelines stipulates that:

> "Organs may be removed from the bodies of deceased persons for the purpose of transplantation if:
>
> (a) any consents required by law are obtained, and
>
> (b) there is no reason to believe that the deceased person objected to such removal, in the absence of any formal consent given during the person's lifetime".

Concerning children, Principle 4 provides that:

> "No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues."

107. There are key stipulations against commercialization as follows (Principle 5):

> "The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any compensation or reward) for organs should be prohibited."

and:

> "It should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered." (Principle 8.)

108. The Council of Europe has established a working group on this issue. At its first meeting in 1992, it adopted a working definition of the term "organ" as follows: "a part of the human body consisting of a structured arrangement of tissue which, wholly removed, cannot be replicated by the body". 22/

109. This is taken to exclude blood, sperm or tissue other than organs. It also distinguishes between organ transplants from living persons and those from cadavers. The working group has cautioned against the pervasive trade in organs, noting that "nationally and internationally, trade in organs was a reality and its increase was a cause for concern". 23/

National developments

110. The search for information at the national level has been difficult. The Special Rapporteur has been in touch with Governments, the non-governmental sector, the police, journalists, doctors and the World Health Organization to request updated information on the subject. During each of the country visits undertaken by the Special Rapporteur, the question of organ transplants was also scrutinized.

111. In 1991, an extensive questionnaire on the sale of children was sent by the Special Rapporteur to all Governments and a number of non-governmental organizations. In their responses to this questionnaire, none of the Governments which replied stated that the sale of children's organs had taken place on its territory. However, in other contexts, the situation is more equivocal.

112. For instance, in 1990, in a report prepared for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Government of Mexico is quoted as stating that "cases of adoption of children for commercial ends had been recorded in Mexico. ... the unlawful ends for which Mexican minors were adopted included exploitation of their labour, sexual exploitation, sale of children for profit and even sale of organs" (E/CN.4/Sub.2/1990/43, para. 38).

113. In 1992, a statement from Mexico to the Working Group on Contemporary Forms of Slavery at its seventeenth session provided a different perspective:

> "In accordance with national legislation, a national register of transplants had been established in Mexico to coordinate the distribution of organs. It exercised close supervision of persons donating and receiving organs. The donation and distribution of organs, in accordance with national legislation, were free of charge. The process of supervision of the scrupulous enforcement of the legislation on the disposal of organs and tissues for transplant purposes was an ongoing effort. The Government of Mexico had conducted a careful investigation at the federal level and had found no evidence of the existence of organ trafficking" (E/CN.4/Sub.2/1992/34, para. 105).

114. Issues emerging in 1992 are discussed in the following paragraphs.

115. There are continuing concerns surrounding the issue of children used in the sale for organ transplants. As noted by a member of the non-governmental sector at the Working Group meeting cited above:

> "... the representative of the International Association of Democratic Lawyers said that it was increasingly difficult to obtain reliable information on the traffic in organs, particularly concerning children, because of its links with criminal organizations.
>
> Another member of the organization reported on cases and rumours of trafficking in organs in Latin America. In almost all the Latin American countries, official inquiries were under way. These inquiries rarely ended with a prosecution because witnesses and evidence disappeared

quickly. The most requested and easy to find organs were kidneys and corneas. The victims of that odious traffic were kidnapped. Those later found still alive were often under the effects of heavy drugs which prevent them from remembering the events. Their names are usually not known because the victims and their families are afraid of possible retaliation by the traffickers" (E/CN.4/Sub.2/1992/34, paras. 101-102).

116. It was reported in the Latin American Weekly Report of 29 August 1992 that a member of the non-governmental sector had said that poor and handicapped children were killed for their organs. The Latin American bishops conference had said it would look into the allegations, but so far it had received little or no proof. The Special Rapporteur expresses the hope that the results of these investigations, once completed, will be aired to the public.

117. In a statement to the United Nations in 1992, a representative of the International Association of Democratic Lawyers expressed the following queries concerning various South American countries which may be linked with the sale of children for organ transplantation:

Where are the disappeared children (Peru)?

Where are the corneas taken from a hospital in Buenos Aires?

Where have the organs extracted from adults and adolescents at the Faculty of Medicine in Barranquilla gone to?

Where have the kidneys taken from a private clinic in São Paolo disappeared to?

118. The incident in Buenos Aires has led to a judicial investigation amidst allegations of removal of corneas from children in a hospital in Argentina. The director of that hospital is now in prison. A report cited in the Nouveau Quotidien Suisse of 12 March 1992 and Le Monde Diplomatique of August 1992 quotes the Minister of Health as follows: "Il y a des détails que je ne peux pas raconter, pas seulement pour des raisons de bon goût, mais parce que cela me fait dresser les cheveux en tête".

119. All these reports require detailed and independent investigations at the national level, with international monitoring, and the results should be made public to forewarn others of the dangers.

120. It has been known for some time that in India there is an extensive organ trade concerning adults. As noted by a local source:

"India now has the dubious honour of having probably the largest number of transplants of kidneys taken from live donors not related to the patient ... India has, in fact, always been on the world map as far as trading in human body parts was concerned. It was the largest exporter of skeletons sending out something like 10,000 annually. But in 1985 the Government, after reports of some gruesome grave robberies, put severe restrictions on the trade". 24/

It is not certain to what extent these practices affect those under 18 years of age.

121. The Government is now taking measures to curb the organ trade with the introduction of a new law penalizing abuses and regulating removal of organs from cadavers and living persons for transplants. According to the Times of India of 12 August 1992, penalties will be directed against "persons who seek to supply for payment any human organ, offers to supply any human organ for payment, initiates or negotiates any arrangement involving making of payment for the supply of any human organ". Related advertisements are also prohibited.

122. More specifically on children, it is reported that the new law provides as follows: "Removal of organs from children defined as brain stem dead will be permitted only with the parents' written consent ... Legislation will cover eyes, kidneys, bones, bone marrow, liver, heart, pancreas and lungs". 25/

123. It is further reported that the customers for organ transplants come from a variety of countries, not only developed countries but also developing countries, with some unexpected consequences. The following observation from the Straits Times of 1 May 1992 exemplifies the situation: "A Singapore General Hospital study of patients from 1986 to May last year showed that about 150 of the patients who went to India and China returned with serious diseases and infections such as hepatitis and AIDS".

124. The use of fragments of human foetus and the reproductive system for various purposes has also given rise to commercialization which needs to be dealt with, even though this does not fall neatly into the definition of "human organ" referred to earlier.

125. Many countries are now adopting laws to regulate human organ transplants. These should be coupled with codes of ethical conduct for medical practitioners, and they should also review and regulate the situation concerning use of the human foetus, in vitro fertilization and surrogacy to prevent commercialization and abuse.

126. While the advent of technology is adding new dimensions to the issue, historical antecedents concerning the use of children's organs should not be forgotten, especially as some of them still persist in the modern era. For example, one source from the Côte d'Ivoire notes that there may be certain ritual sacrifices and ceremonies which make use of children's organs. These need to be identified further and prevented accordingly.

127. A caveat to be lodged continually is that there is definitely a proven trade of human organs concerning adults; the threat to children is thus ever-present. This calls for effective precautions, updated law and law enforcement, as well as community vigilance against such practice.

D. Other forms of sale

128. In the previous report of the Special Rapporteur, it was decided to add this category as a residual group to deal with situations not falling clearly into sale by adoptions, sale for child labour exploitation, and sale of

children's organs. Of particular relevance are the issues of disappearances, abductions and kidnapping of children, on the one hand, and child soldiers, on the other hand.

129. In regard to the disappearances of children, there is often an overlap with allegations of children kidnapped for adoption and between parents in custody matters, for exploitation of labour, and for organ transplants. However, beyond these, there are disappearances which are ambiguous or unexplained.

130. The phenomenon is on the rise in the Philippines. Information provided by the Department of Social Welfare and Development notes the threat of kidnapping and abduction of children by individuals or organizations as follows: "Though the existence of a syndicate is not documented, (there are) reported cases where babies (have been) kidnapped while in hospitals and clinics or (at) play in their own backyard".

131. According to the Slogan of July, August and November 1991, in Pakistan there are continual reports of girls being abducted, and at times subjected to physical harm such as rape.

132. In 1991, it was reported that some 182,000 people, mostly Kurds and Shiites, including children, had disappeared in Iraq. 26/

133. In Europe, in the previous report of the Special Rapporteur it was noted that a gang had been arrested in Berlin for kidnapping and selling children through a sales catalogue. Some had been abducted from refugee shelters in Germany, while others had links with Romania.

134. In the United States there have been recent reports of children kidnapped from hospitals; in one case, reported in the Los Angeles Times of 17 September 1992, the kidnapper posed as a health care worker. The same source estimated on 1 April 1992 that some 3,000 children leave the country illegally, and that these may be linked with disappearances. As noted earlier, there is a close connection with Mexico, and there are also instances of children being taken across the border to Canada.

135. In Mexico itself, El Diario of 1 October 1990 estimated that thousands disappear from the country each year. There are continuous reports of disappearances in South American countries which may or may not be linked with the aspects of sale already touched upon in this study. Some of the children are abducted and compelled to become child soldiers.

136. This leads appropriately to the issue of child soldiers which can also be classified as a form of child labour exploitation. Part of the problem arises from the varying criteria concerning the age of conscription. In different countries, this varies between 15 and 18, but in practice, much younger children are used as child soldiers.

137. A number of human rights instruments touch upon the issue. These include the Additional Protocols I and II to the Geneva Conventions of 12 August 1949. 27/ The Convention on the Rights of the Child contains the following provision, which is not as effective as desired:

"Article 38:

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest."

138. As noted in the previous report, the threshold age of 15 is too low and should be raised to 18 in accordance with the definition of the term "child" offered by the Convention. Interestingly, in the African Charter on the Rights and Welfare of the Child, 1990, this age threshold is implied. In article 22 (2), it is stated that "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and (shall) refrain, in particular, from recruiting any child". Although this article does not mention the age limit, an earlier article 2 stipulates that, for the purpose of the Charter, the term "child" covers those under 18 years of age.

139. Respect for children as prisoners of war when captured in an armed conflict also needs to be promoted. As noted in the International Review of the Red Cross:

"Children under 15 who, notwithstanding the injunction of the Protocols, are recruited or enrolled as volunteers in the armed forces, also have combatant status and will, if captured, have POW status. Although the participation of children in hostilities is prohibited, it is none the less necessary to ensure that they are protected if captured. There is no age limit for entitlement to POW status. Age may simply be a factor justifying privileged treatment. A child combatant under 15 who is captured cannot be sentenced for having borne arms. Responsibility for their breach of the law lies with the Party to the conflict which recruited or enrolled the children. Although penal sanction may be applied against them, no person can be condemned to death if at the time of committing the offence that person was under 18 years of age, and even if so sentenced, the sentence can in no case be carried out". 28/

140. The Friends World Committee for Consultation (Quakers) have compiled a list of situations involving child soldiers under 18 years of age between 1967 and 1992 as follows:

(a) Recent wars of independence: Angola, Bangladesh, Eritrea, Guinea-Bissau, Lao People's Democratic Republic, Mozambique, Namibia, Viet Nam, Zimbabwe;

(b) Current wars of independence: Kurds in the Islamic Republic of Iran, Iraq, and Turkey; Palestine; Western Sahara/Morocco;

(c) Recent civil wars and strife: Angola, Cambodia, Chad, Cyprus, Equatorial Guinea, El Salvador, Ethiopia, Lebanon, Nicaragua, Somalia, Sudan, Uganda, Viet Nam;

(d) Current civil wars and strife: Afghanistan, Azerbaijan, Cambodia, Colombia, Guatemala, Indonesia/East Timor, Indonesia/West Irian, Liberia, Mozambique, Myanmar, Peru, Philippines, Rwanda, Somalia, Sri Lanka, Sudan, Uganda, United Kingdom/Northern Ireland;

(e) Recent international wars and civil wars with foreign intervention: Afghanistan/Union of Soviet Socialist Republics; Iraq/Coalition including Kuwait; Libyan Arab Jamahiriya/Chad; Uganda/United Republic of Tanzania; United States of America/Viet Nam; Cambodia/Viet Nam; Islamic Republic of Iran/Iraq; Somalia/Ethiopia; United Kingdom/Argentina;

(f) Current international wars and civil wars with foreign intervention: Lebanon/Syrian Arab Republic; Lebanon/Israel.

141. In 1991, the Working Group on Contemporary Forms of Slavery learned that there were some 200,000 child soldiers in the world (E/CN.4/Sub.2/1992/35, para. 19).

142. Reports from Quaker's United Nations Office in 1992 note the following areas of concern: Azerbaijan, Afghanistan (use of child soldiers by both government and non-government forces), Angola, Myanmar (use of child soldiers by ethnic groups fighting against the Government), Cambodia (child soldiers found among the various warring groups), Colombia (child soldiers joining guerilla groups), El Salvador, Ethiopia (kidnapped boys used as conscripts), Guatemala, Honduras, Iran (Islamic Republic of), Iraq (child soldiers used by Kurdish groups), Israel (children trained for war), Lebanon (children trained for war), Liberia, Mozambique (children as young as six forced into military service), Nicaragua, Peru (children recruited by the Shining Path guerillas), Philippines (children used as vigilantes in Mindanao), Rwanda, Sri Lanka (children kidnapped and used as soldiers), Sudan (children kidnapped and used as soldiers), Uganda.

143. The tragedy of these child soldiers is often linked to kidnapping and coercion. As observed by a recent report on children in Mozambique: "Young boys in the South run the greatest risk of being kidnapped by Renamo to serve as combatants. The average age of boys interviewed who trained in the South was 11.5 years ... During training, children are drilled for long hours and beaten when they do not perform as commanded". 29/ According to information received, there are allegations that when they are captured, they are tortured by government forces.

144. Even when children are not used as child soldiers, they may be abused as adjuncts of the conflict. In Myanmar, for example, it has been claimed that children have been abducted and used as porters and have been placed at the front line of the fighting.

145. In recent times, there have been increasing concerns expressed for civilian children caught in armed conflicts even where they do not participate as child soldiers. Although this group does not fall strictly under the

mandate of the Special Rapporteur, there are growing fears for their safety, and greater attention by international human rights mechanisms, including the Committee on the Rights of the Child, should be paid to this issue.

146. This is illustrated currently by the military threats to children caught in the middle of warfare in such regions as Bosnia and Herzegovina. There is a call for stronger action by the United Nations, Governments and the non-governmental sector to provide for their safety. This is all the more urgent as there is a "push factor" inducing civilian children to join the armed groups: "It is not uncommon, particularly in the absence of social services that during situations of armed conflict children in great need separated from family and without means of support, attach themselves voluntarily to combatant groups as a measure of survival". 30/

147. Closer adherence to international human rights law, particularly through accession to the relevant international instruments, is desired. However, dialogue and training should be maximized among armed groups, both governmental and non-governmental, so as to ensure that they respect children as a "zone of peace".

II. CHILD PROSTITUTION

148. The working definition adopted for the term "child prostitution" is "the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)". This was the basis for the questionnaire on the sale of children circulated globally by the Special Rapporteur in 1991.

149. The previous report of the Special Rapporteur delved extensively into the underworld of child prostitution. Although the extent of this phenomena varies from country to country, sadly, it exists in all regions of the world. In developing countries in particular it is often linked with poverty. But economic needs push children into entering the trade at times, even in developed countries. However, poverty cannot be seen as the sole cause of child exploitation in this field. The fact that parents are willing to sell their children into the trade in various countries indicates a deeper malaise in the society: the treatment of people as wares for the purpose of consumerism is underscored by the decline in ethics and disintegration of the family nexus.

150. The scenario is intricately linked with supply and demand factors. The multitude of clients come from both developing and developed countries. In recent years, however, sex tourism, with customers from developed countries exploiting children in developing countries, has emerged as part of the transnationalization of the demand syndrome.

151. Another side to the coin is that there is systemic and individual criminality, coupled with corruption, which profiteers from prostitutes in general and child prostitutes in particular. The criminality is part and parcel of a business, at times with a façade for whitewashing the illegal returns. This is a major root cause of child exploitation which has not been sufficiently addressed. At the very worst, children are abducted, drugged and coerced by gangs and syndicates into prostitution both locally and across

frontiers. They may also be killed or maimed in the process. The tragedy is aggravated by the advent of AIDS and the various forms of discrimination which arise against child prostitutes faced with this dilemma.

152. Interestingly, in all the countries studied under this mandate, there are many existing laws which can be used to protect children from prostitution. These vary between special laws on women and children and general criminal laws and codes which also apply to child trafficking and exploitation. Yet, in many instances they are not implemented. In practice, the customers tend to be exempted from their application. Those caught by the law tend to be the children and the procurers rather than the consumers, even though the law should be applied to incriminate the latter.

153. Another serious loophole is that the issue of proper law enforcement has not been tackled directly. More specifically, if the police are badly paid, as is the case in many countries, and if they are untrained to protect children as a "first call", the situation lends itself to their being passive towards the issue of child prostitution in those countries, and some may have a hand in the whole industry as part of an ingrained process.

International developments

154. There has been a long line of international instruments relating to slavery, trafficking and exploitation of women and children. The most recent is the Convention on the Rights of the Child which calls for measures against the inducement or coercion of a child to engage in any unlawful sexual activity, and against the exploitative use of children in prostitution (arts. 19 and 34).

155. In 1992 the United Nations Commission on Human Rights, in the annex to its resolution 1992/74, adopted the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography. The strategies include more information, education, legal measures and law enforcement, social measures and development assistance, rehabilitation and reintegration, and international coordination to address the issue of child prostitution. The Programme of Action calls for effective legal and administrative measures to prevent trafficking and sale of children, and various specific concerns are voiced as follows:

> "46. Incest and sexual abuse within the family or by the child's employers may lead to child prostitution. States therefore should take all appropriate legislative, administrative, social and educational measures to protect children against all forms of abuse while in the care of parents, family or legal guardians or any other person.
>
> 47. Special attention should be paid to the problem of sex tourism. Legislative and other measures should be taken to prevent and combat sex tourism, both in the countries from which the customers come and those to which they go. Marketing tourism through the enticement of sex with children should be penalized on the same level as procurement.

48. The World Tourism Organization should be encouraged to convene an expert meeting designed to offer practical measures to combat sex tourism.

49. States with military bases or troops, stationed on foreign territory or not, should take all the necessary measures to prevent such military personnel from being involved in child prostitution. The same applies to other categories of public servants who for professional reasons are posted abroad.

50. Legislation should be adopted to prevent new forms of technology from being used for soliciting for child prostitution".

156. The Working Group on Contemporary Forms of Slavery of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has also prepared a draft programme of action for prevention of traffic in persons and the exploitation of the prostitution of others which, although not specifically addressed to children, has various strategies which can be promoted for their protection (E/CN.4/Sub.2/1991/41, annex I, paras. 1-42). These include information, social measures and development assistance, legal measures and law enforcement, rehabilitation and reintegration, and international coordination.

157. These programmes of action deserve to be disseminated broadly at the national level, and implementation by States should be encouraged with consistent monitoring and reporting to the United Nations Commission on Human Rights as well as to other concerned international entities such as the Committee on the Rights of the Child.

158. At the regional level, the Council of Europe adopted a Recommendation on Sexual Exploitation, Pornography and Prostitution of and Trafficking in Children and Young Adults in 1991, 31/ with emphasis on the importance of organizing the public against sexual exploitation, information campaigns, information collection, interaction with travel agencies, accession to the relevant international instruments, expansion of national jurisdiction to cover the misdeeds of nationals abroad, exchange of information, and more research on paedophilia and the link between the sex industry and organized crime.

159. At a meeting organized by the United Nations in the Asian and Pacific region on the promotion of community awareness for the prevention of prostitution, the need to break the silence on the issue was accentuated to prevent stigmatization and to promote economic measures, awareness raising, assistance and shelter for prostitutes, research on AIDS, and accession to relevant international instruments (see ST/ESCAP/1078). The meeting also called for decriminalization of prostitution in general, while punishing the exploiters of prostitutes.

160. Non-governmental organizations have become increasingly coordinated in networking to prevent child prostitution. In this regard, a noteworthy campaign is ECPAT, or End Child Prostitution in Asian Tourism. Its country links include Australia, France, Germany, India, Japan, the Philippines, Sri Lanka, Switzerland, Taiwan, Thailand, the United States and Viet Nam. It

has mobilized action at the national level, e.g. children's forum against military bases in the Philippines, advocacy against paedophilia, and campaigns against exploitative use of children in advertising in various countries. 32/

National developments

161. The situation at the national level in 1992 remains disquieting. Cross-frontier trafficking of women and children is becoming more visible in various parts of the world. Countries which were not previously known for widespread child prostitution are also coming to the fore.

162. A serious problem of child prostitution persists in many Asian countries including Bangladesh, India, Nepal, Pakistan, the Philippines, Sri Lanka, and Thailand. Trafficking to and from the following countries has become more evident: Cambodia, China, the Lao People's Democratic Republic, Myanmar and Viet Nam. The range of sex tourists visiting these countries covers many regions, including Australia, North America, Europe, Japan and the Middle East. In this connection, the impact of local tourism should not be underestimated: many customers are local customers rather than foreigners, while customers from countries in the immediate vicinity are also visible, e.g. Malaysian tourists in Thailand.

163. The high proportion of child prostitutes in Thailand has been aggravated by the arrival of children lured and trafficked from countries such as Cambodia, China, the Lao People's Democratic Republic and Myanmar. The present Government has adopted the issue of child prostitution as an urgent policy concern for countermeasures. This is welcome and should be complemented by broad-based community measures to deal with the root causes as well as remedies against exploiters of children. Various complaints concerning child exploitation in 1992 also prompted the Special Rapporteur to communicate directly with the Thai Government. The response of the latter is provided in the "Communications" section of this report.

164. Of particular concern are the physical and psychological threats to children; many are lured and tricked by criminal elements into prostitution. Some are incarcerated in brothels throughout the country. In recent years, there have been some successful police raids to release them. However, since the problem is pervasive, it is necessary to have more community mobilization to identify and prevent the exploitation of children for sexual purposes.

165. A key issue is that of law enforcement; while there are several laws which can be used to protect children, they are not implemented effectively. The commitment and high standards of law enforcement by personnel are at stake. While good police require more incentives in terms of better pay for their work, more infrastructure to counter criminal elements, and support facilities to help children and their families, members of the law enforcement authorities colluding with exploitative business interests need to be identified and dealt with.

166. The system of criminal business activities involved in the trade of children is extensive. Measures to counter their operations will need more than police intervention; it is the whole community that has to be vigilant,

and the authorities should empower the community by means of incentives and facilities to intervene on behalf of children through such channels as non-governmental organizations, community leaders and the mass media.

167. Numerous reports concerning the inhumane treatment of girls from Myanmar trafficked into Thailand and then sent back to Myanmar have appeared in the last two years. There are indications that where those repatriated from Thailand are found to be HIV positive, they are segregated by the Myanmar authorities and/or come to physical and psychological harm. This may also have a negative impact for their families.

168. The situation calls for guarantees of safety for these girls if they are to be returned to Myanmar from Thailand. The process of return should be subject to consistent and independent monitoring, with international supervision, to ensure that the children are protected upon return and are not mistreated. They also need to be supported by medical and other facilities to ensure a degree of normalcy in adapting to the process of return. The attention of the Committee on the Rights of the Child, the United Nations Special Rapporteur on the situation of human rights in Myanmar, and other concerned human rights mechanisms is invited in this regard.

169. The extensive problem of child prostitution in the Philippines is linked with the large number of street children in the country and the spread of the sex trade. The Government has taken more positive measures to curb child exploitation by promoting the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act, otherwise known as Republic Act 7610.

170. There has also been a clamp-down on foreign paedophiles and a number have been arrested and deported. However, judicial action against child exploitation is not a simple matter. In a 1991 case concerning the death of a girl allegedly abused by a foreign paedophile, the latter was acquitted upon appeal on grounds of reasonable doubt concerning the evidence. The court intimated as follows:

> "It is with distressing reluctance that we have to seemingly set back the efforts of the Government to dramatize the death of Rosario Baluyot as a means of galvanizing the nation to care for its street children. It would have meant a lot to social workers and prosecutors alike if one paedophile killer could be brought to justice so that his example would arouse public concern, sufficient for the formulation and implementation of meaningful remedies. However, we cannot convict on anything less than proof beyond reasonable doubt". 33/

The court noted also that paedophilia is still not a crime in the country's statutes. However, the court added that the appellant had abused Filipino children, enticing them with money, and recommended his expulsion.

171. Recent reports indicate a rise in child prostitution in Cambodia, China and Viet Nam. This is partly caused by the liberalization of economic policies - more open towards the outside world and foreign investments - which also gives rise to more opportunities in the service sector, at times with negative results for children lured into such a sector. Despite new

legislative reforms the situation continues to deteriorate. For example, Cambodia has adopted a new Criminal Procedure Code which can also be used to help children. In 1991, Viet Nam also passed a parallel law on protection, care and education of children.

172. In Taiwan, as reported in Slogan in July 1991, there are continuing reports of young aboriginal girls from the mountain villages sold to Taipei for the purpose of prostitution.

173. According to information received, Japanese tourists are sometimes a component of the sex tourism and visit various Asian countries for the purpose of acquiring sexual services. In Japan itself, there is a large number of undocumented migrant workers, including workers in the sex trade, who are at times abused by their local employers. The Slogan report refers to Japanese non-governmental organizations which filed suits against local employers of foreign prostitutes on charges of abduction and forced prostitution, leading to sentences against them. One court correctly noted that while the victims were staying in Japan illegally, their status does not justify their exploitation by others.

174. As it is uncertain to what extent children under 18 are a part of this invisible labour force, more study is desirable on this front. Humane treatment of these persons should also be guaranteed by the local authorities in keeping with the spirit of the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

175. The mobilization campaign led by ECPAT has resulted in police action against paedophiles in Sri Lanka. In 1991, a boy prostitution ring was identified and action taken against foreign paedophiles. 34/ A number were arrested and deported. Child welfare advocates have recommended that there should be a law to prohibit unaccompanied young boys from being taken into hotel rooms by single male tourists. There are also reports of a large number of girl prostitutes in the free trade zone in the country, who are coerced into rendering sexual services.

176. A number of girls are trafficked from Nepal and Bangladesh into India. According to one report: "The girls (from Nepal) being trafficked into India are mostly fair skinned girls from the Mongol community, mostly of the Tamang ethnic group who are scattered into the country". 35/

177. The situation in India is particularly worrying, not only because of the large number of local and foreign child prostitutes but also because of the spread of AIDS. Criminal elements cast their net far and wide to trick girls into the trade, and there is a link with the drugs issue and a variety of crimes. This is despite the presence of a number of laws which may be used to protect women and children.

178. In the previous report of the Special Rapporteur, certain cultural practices detrimental to children were also noted. These included the practice of selling children into various religious institutions where the children ultimately end up in prostitution.

179. Reports from Pakistan indicate trafficking of children from Bangladesh, Bhutan, India, Nepal and Sri Lanka. Tragically, girls forced into prostitution are sometimes arrested and placed in prison pending their return to the country of origin. 36/ Various legislative anomalies discriminate against girls in prostitution, and at times procurers even offer bail to the authorities under the guise of wishing to help the girls who have ended up in prison. If released, the girls fall into the hands of the procurers once again.

180. As many of the girls trafficked into prostitution do not enter the country of their own free will, a strong case can be made to exempt them from the application of local immigration law and related imprisonment for illegal entry into the country. A better approach is to offer them social facilities, education and guarantees to ensure safe return to the country of origin, and sanctions against those who have exploited them.

181. In Africa, many countries are faced with a rising child prostitution problem, partly due to poverty, migration from rural to urban areas, and the advent of tourism. In Mauritania, there are reports of foreign paedophiles at work and an increase in boy prostitutes. In Ghana, young girls are tricked into prostitution in the belief that they will be housemaids. The increase of child prostitutes in the Côte d'Ivoire is also visible, and this may be partly due to the war in Liberia which is driving people out of the country into neighbouring countries in search of a livelihood.

182. In Burkina Faso's reply to the Special Rapporteur's questionnaire on the sale of children, received in 1992, it is indicated that there is an increase of child prostitutes in urban areas. In Ethiopia, although the problem also exists, according to one source, there are no prosecutions against the perpetrators.

183. In Europe, new light has been shed on the problem of child prostitution and its interrelationship with new technology and pornography. In France, recent developments concerning the use of the telephone system "Minitel" to offer the services of child prostitutes is a case in point. One report suggests that parents may be involved in offering their children's services. 37/

184. In Belgium, there are reports of networks luring women from other countries under the guise of dating agencies and marriage bureaux. In Spain, there was the recent Edelweiss case involving trafficking of women from abroad and the provision of sexual services though saunas. It is not certain to what extent these cases concern child exploitation, and they deserve closer investigation at the local level.

185. Recent reports indicate a rise in street children in Eastern European countries interlinked with prostitution and drugs. In the Russian Federation, a number of these street children are also known to suffer from venereal diseases.

186. On another front, it is interesting that in Switzerland, in 1992, a non-governmental organization took action in court against a travel agency for arranging sex tours in developing countries. 38/ As a result, the agency

was excluded from the Swiss Federation of Travel agencies and had to shut down. This exemplifies the positive role which the private sector can play in exerting peer pressure to be accountable to children.

187. An additional issue concerns the methods of entrapment and whether these would be admissible in court as evidence. The police have been accused of laying traps for customers through various means (e.g. use of post office boxes). In Belgium, these have not been permitted in court. In other countries, it seems that in order to trap culprits, the police must have serious suspicions before they can do so.

188. On another front, there is at times depiction of children in pornographic or semi-pornographic poses which are linked with advertisements for prostitution and sex tourism. This appeared during the year in regard to an advertisement placed by Lauda Air. Due to protests from the non-governmental sector, the offending advertisement was withdrawn. The Special Rapporteur communicated directly with the Austrian Government to request action on the issue, as the airline is based in that country. The response of the Government is provided in the section on "Communications" in this report.

189. The practices of European paedophiles from such areas as Germany, Switzerland and the Scandinavian countries in developing countries has led to a call to extend the criminal jurisdiction of these countries of origin to cover criminal acts committed against children abroad. Germany is currently exploring this with a view to curbing the behaviour of its nationals abroad in regard to child prostitution and child pornography.

190. In North America, the problem of child prostitution is often linked with the break-up of the family and economic needs inflicted on children. There is also a relationship with drug abuse, including the sale of "crack" on the streets, and criminality, with tragic consequences. As noted by a recent international seminar: "The tragedy was compounded by child prostitutes who had become addicted to drugs, ultimately to be threatened with the advent of AIDS, especially intravenous users. In this sense, the children were double pawns for criminal elements: they were controlled by syndicates in regard to both the prostitution and addiction to drugs". 39/

191. The issue becomes more convoluted due to the presence of various paedophile associations in the United States which coordinate their operations at home and abroad. Recently, one American group set up a so-called children's shelter in Thailand as a front for paedophilia. The organizer was arrested and imprisoned.

192. In Canada, according to the Government's reply to the Special Rapporteur's questionnaire, received in 1992, a root cause of child prostitution is homelessness among youths, coupled with domestic violence, poverty and sexism. There is a rise in child prostitution, particularly among street children. The national approach waivers between whether to use a criminal law-based approach or a social intervention-based approach.

> "(There is) a lack of consensus on the role of legislation in curtailing juvenile prostitution. It is generally felt that young people under 16 should be dealt with through local child welfare

measures rather than being arrested. Others believe that Criminal Code measures (arrests) may prevent some young people from entering the business".

193. It is submitted that social measures, coupled with a developmental and participatory approach on the part of the child, are preferred. This is all the more important as the root causes of the problem are often created by others in the context of socio-economic dislocation and disintegration rather than by the child.

194. The situation in Central and South America remains serious, particularly with the multitude of street children. Many of the problems expressed in the Special Rapporteur's previous report await concrete action at the national level. In particular, Brazil remains high on the list of concerns; there is disquieting trafficking of children in the Amazon area for the mining camps, as well as in the cities. It is often related to the drugs problem and sex tourism.

195. Prior to the Special Rapporteur's visit to Australia, there was little information on the child prostitution problem in the country. The current situation is provided in the addendum. Suffice it to note in this section that there is both an issue of local prostitution as well as Australian paedophiles operating abroad, particularly in South-East Asian countries.

III. CHILD PORNOGRAPHY

196. The working definition adopted by this mandate for "child pornography" is "the visual or audio depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material". This was used as the basis for a questionnaire circulated to member States in 1991. To this may be added the presence of various pornographic performances which go beyond the availability of pornographic material.

197. The situation of child pornography is often interwoven with child prostitution; the one may lead to the other, and vice versa. In recent years, the advent of new technology raises many questions regarding the efficacity of existing laws on this issue. Equally important is the issue of consumer liability; some jurisdictions do not criminalize possession of child pornography while others do.

198. While some of the laws need to be reappraised, the root causes which lead to child pornography, such as domestic abuse, family dislocation, poverty and criminality, call for further preventive and remedial measures. The psychological aspects of pornography and paedophilia should also be scrutinized; if there are psychological reasons for aberrant behaviour, socio-medical measures may at times be more effective than legal sanctions.

International developments

199. The most recent international instrument on the issue of child pornography is the Convention on the Rights of the Child, articles 19 and 34 of which voices the need for measures against exploitative use of children in pornographic performances and materials.

200. In 1992 the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, referred to above, was adopted by the Commission on Human Rights. It emphasizes the need for more information, education, legal measures and law enforcement, social measures and development assistance, rehabilitation and reintegration, and international coordination. On the issue of child pornography, certain measures are underlined:

> "52. Law enforcement agencies, and social and other services should place a higher priority on the investigation of child pornography in order to prevent and eliminate any exploitation of children.
>
> 53. States that have not yet done so are urged to enact legislation making it a crime to produce, distribute or possess material involving children.
>
> 54. Where required, new legislation and penalties should be introduced for the mass media which broadcast or publish material threatening the psychic or moral integrity of children or containing unhealthy or pornographic descriptions and to prevent new technology being used to produce pornography, including video films and pornographic computer games.
>
> 55. States should be encouraged to protect children from exposure to adult pornography, especially through new forms of technology, by adopting suitable legislation and appropriate measures of control.
>
> 56. States should encourage the mass media and the journalistic profession to adopt codes of practice governing the publication of material, including advertising, with pornogaphic overtones, and should remind them of their responsibility in influencing public attitudes."

The trend is thus to criminalize possession of child pornography as well as to tackle new forms of technology.

National developments

201. The national settings are not self-contained; there is a lot of interchange of child pornography between different countries. This transnationalization may be on a small-scale, individual basis or on a large-scale systemic basis.

202. The problem is rampant in Europe. In Germany, the network of child pornography is extensive. As noted by a German parliamentarian:

> "A particularly abhorrent type of sex exploitation has developed in recent years in the shape of child pornography videos. A large proportion of these videos are amateur films which are often produced by fathers with their own children or by relatives or other close acquaintances. These films are swapped with other child pornography fiends. Estimates in the Federal Republic of Germany indicate that a video swap network exists with about 30,000 so-called 'collectors'. The videos are also produced commercially. Here, too, it can happen that

> parents make their children available for such films for money. Often, however, those films are shot in Germany or Southern countries using children from the third world ... Child pornography is lucrative business in which millions change hands. In the Federal Republic of Germany alone the annual turnover is estimated to amount to more than 40 million DM". 40/

203. There is now a draft law to punish possession of child pornography; the approach is to attack the demand side without which there would not be such an extensive supply.

204. During 1992, the Special Rapporteur communicated directly with the German Government concerning Spartacus a publication various parts of which are alleged to invite paedophilia. It may be mentioned here that there is an overlap between child prostitution and child pornography as far as this publication is concerned. The response of the Government is provided in the "Communications" section of this report.

205. As noted earlier, there was also communication with the Austrian Government concerning an advertisement of Lauda Air. This is also dealt with in the "Communications" section.

206. A police comment on child pornography in the United Kingdom recently indicated that the process of paedophilia usually starts with the collection of "soft" erotic materials and then moves on to hard-core pornography. 41/ At times there may be a link with black magic. The legal position is clear: there are penalties for trafficking child pornography as well as for possession of it.

207. A recent example of child pornography in France is the "Minitel" system, referred to above. Telephone networks have been used to offer the sexual services of children. In France, the position on this matter is regulated by a 1990 law which strikes a balance between freedom of communications and children's rights, and there is a distinction between "erotica", which is permissible, and "pornography", which is not. Public action can be taken in the case of outrage to public morals.

208. In North America, child pornography is widespread. The serious situation in the United States was analysed in the previous report of the Special Rapporteur. According to a recent report, since 1984 the United States Postal Service has prosecuted some 2,000 individuals on this issue, and the police sometimes use undercover advertisements to trap would-be culprits. 42/ The present legal position is as follows: federal laws punish the use of computers for pornographic purposes; verbal exchanges of pornographic statements are not punishable, but they may be punishable if there is foul or obscene language; pornographic communications give rise to accountability if they are conveyed by mail or computers.

209. One Canadian source indicates the existence of nude dances as pornographic performances in the country. 43/ There are also magazines which embody child pornography. Many of the pornographic materials come from the United States and a number are home produced.

210. The Canadian reply to the Special Rapporteur's questionnaire, received in 1992, cites the Criminal Code as offering protection to children in these cases. However, it does not incriminate mere possession of child pornography. There is also a test used by the courts to determine whether the material is obscene. The latter covers "undue exploitation of sex". A key catalyst in the process is the role of customs officials who have to track postal communications; they apply the Criminal Code as necessary. From 1986-1990 there were some 39,000 enforcement actions by the Canadian authorities of which 1.3 per cent concerned child pornography. The Government is also considering the possibility of enacting a more specific law on child pornography.

211. In Asia and Africa, there are reports of an increase in child pornography materials through videos. These are often linked with sex tourism; paedophiles come to the region to film children for later distribution in their countries of origin. A recent report indicates that the rise in child pornography videos in Taiwan is due to imports from Japan. 44/

212. Pornographic performances using children are also reported in various tourist destinations such as Thailand.

213. The situation in Australia is provided in the addendum. There are sporadic cases of child pornography, as well as the presence of Australian sex tourists indulging in paedophilia and related pornography in South-East Asian countries.

IV. COMMUNICATIONS

214. During the course of 1992, the Special Rapporteur communicated directly with various Governments with regard to the issues under the mandate. These communications were prompted by reports concerning situations affecting children's rights, calling for effective clarification and response. The Special Rapporteur acted on the basis of prima facie evidence received from various sources. The cases presented involved individuals, groups and situations requiring attention and action on the part of the States concerned. The Special Rapporteur thanks warmly all the Governments for responding to his communications, and invites concrete and consistent follow-up on all aspects of relevance to this mandate in the pursuit of children's interests.

Austria

215. In September 1992, the Special Rapporteur communicated with the Austrian Government concerning the alleged promotion by Lauda Air (a company whose principal operations are carried out in Austria) of sex tourism oriented towards paedophilia in Thailand. According to information received, Lauda Air had only recently withdrawn an advertising campaign that openly promoted travelling to Thailand for the purpose of engaging in sex tourism. The text of the promotion was vulgar and explicitly sexual, and was accompanied by a cartoon rendition of a young girl, naked from the waist up, framed by a heart and the caption "From Thailand with Love". The images and the text of the advertisement, contained in Lauda Air's most recent in-flight magazine, clearly implied the participation of Thai children in sexual activity.

216. In October 1992, the Austrian Government replied with a denial to the communication, as follows: (excerpt)

> "Investigations by the competent Austrian authorities of the allegations against Lauda Air revealed that the company has not conducted any advertising campaign to promote travelling to Thailand for the purpose of engaging in sexual tourism, as alleged, but published the enclosed cartoons by the well-known cartoonist Manfred Deix in its in-flight magazine.... They not only have no promoting effect, but are clearly recognizable to the average reader as criticism of mass tourism in general and of the problem of so-called sex tourism in particular.
>
> The publication of these cartoons, whether they are judged to be of good taste or not, therefore, does not constitute a criminal offence in Austria. Furthermore, their publication is protected under article 10 of the European Convention on Human Rights (freedom of expression). Therefore, no legal proceedings have been initiated against Lauda Air.
>
> Lauda Air has publicly expressed its regrets about the misunderstanding which these cartoons might have caused annd removed the pages in question from its in-flight magazine."

Germany

217. In September 1992, the Special Rapporteur communicated with the German Government concerning the publication in Berlin of a periodical, entitled Spartacus, which contained passages that openly attempt to facilitate paedophilia-centred sex tourism, child prostitution and child pornography by providing information for its readers concerning such activities around the world.

218. In October 1992, the German Government replied with a denial to the communication, as follows: (excerpt)

> "Several investigations have been opened against one of the managers of the publishing house by the district attorney of Berlin on suspicion of illegal dissemination of pornographic publications. The subject matter of these proceedings were leaflets and catalogues by the publishers advertising pornographic literature on a mail order basis. Two of these legal proceedings were abandoned according to article 170 paragraph 2 of the Code of Criminal Procedure, since the contents of the publications could not be categorized as pornographic. Another legal proceeding ended with the acquittal of one of the publishers whereas an accomplice was fined.
>
> In yet another investigation the accused publisher was charged with having advertised publications explicitly mentioning the pending decision that they would be x-rated. In this case, the district attorney has asked the state court of Berlin to institute legal proceedings. A decision is still pending.
>
> In another case the 7th edition of the 'Spartacus International Gay Guide' was the subject of investigations that, however, led to abandoning

court proceedings under article 170 paragraph 2 of the Code of Criminal Procedure for the reason that the distribution of this publication did not constitute a criminal offence.

The 21st edition of the Spartacus Gay Guide for 1991/2 now being published has been reveiwed by the district attorney of the state court of Berlin with the same result. In particular there has been no factual evidence pointing to paedophilia-centred sexual tourism, child prostitution or child pornography."

Saudi Arabia

219. In September 1992, the Special Rapporteur communicated directly with the Saudi Arabian Government concerning a practice alleged to take place in the country whereby children, reported to be purchased by agents in India, Pakistan, Bangladesh and Afghanistan, are then brought into the country where they are required to perform as riders in extremely dangerous camel races.

220. In September 1992, the Saudi Arabian Government responded with a denial to the communication, as follows: (excerpt)

"1. Camel race is a traditional sport performed by native youth who take pride, as do their families, in such a sport. Slavery was annulled by the Kingdom long ago, hence it is unacceptable to claim that young foreign boys are bought or hired for such purposes. In fact betting and gambling in this sport or others are prohibited by law ...

3. ... The steps taken to investigate this 'phenomena' does not and did not occur in Saudi Arabia and it is regrettable that your communication addresses to our Government such a request concerning mere 'allegations' whose sources are unknown and their contents undocumented and in fact fabricated. Thus your request is rejected ...".

Thailand

221. In September 1992, the Special Rapporteur communicated with the Thai Government concerning the alleged recruitment under false pretences of girls in northern Thailand and Myanmar, and their subsequent incarceration, mistreatment and forced involvement in prostitution in Thailand. There was also evidence to indicate that upon rescue by the authorities, some of the girls were sent back to Myanmar without safeguards concerning their safety.

222. In November 1992, the Thai Government responded with information concerning the situation, as follows: (excerpt)

"1. The Police Department has confirmed the importance it attaches to the problems of Burmese girls lured into prostitution in Thailand. A special unit within the Police Department has been established to monitor, prevent and suppress the traffic in persons and the exploitation of prostitution of women and children ...

2. During the period between June-September 1992 the Thai authorities rescued 95 Burmese women and children from brothels. They

were given health care and education on sexually-transmitted disease and on immigration law. On 15 September 1992, the Thai authorities, representatives of Myanmar and WHO worked together in safely repatriating them.

3. A high-level representive of Myanmar has given assurance to the Thai press that the Government of Myanmar would guarantee the safety of those 95 women and children. Health inspection and care could be again provided for them in Myanmar.

4. For those determined to be non-Burmese nationals, the Thai authorities and NGOs concerned will take care of them. An example is the rescue of 43 Thai Yai women and children in 1992.

The prevention and suppression of traffic in persons from neighbouring countries and forced prostitution of women and children from Myanmar and Northern Thailand are an integral part of the vigorous implementation of the comprehensive policy laid down by the Thai Government in coping with the problems of prostitution and child prostitution in Thailand ..."

United Arab Emirates

223. In September 1992, the Special Rapporteur communicated with the Government of the United Arab Emirates concerning a practice alleged to take place in the country whereby children, reported to be purchased in India, Pakistan, Bangladesh and Afghanistan, are then brought to the country, where they are required to perform as riders in extremely dangerous camel races. Information revealed the case of two Bangladeshi boys, aged eight and ten, who were sentenced to two months in a correction centre for beating a six-year-old fellow camel jockey to death on a camel farm. The alleged motivation for the murder was the fear that their victim was a threat to their livelihood. The judge in the case was reported to have commented that the treatment the boys endured as jockeys drove them to commit the crime.

224. In November 1992, the Government responded with a denial to the communication, as follows: (excerpt)

"1. The State of the United Arab Emirates gives the utmost importance to the care and promotion of the child, in accordance with its faith, Constitution, and national legislation and long-established regulations and practices ...

3. In accordance with the laws and legislation of the UAE, the sale and trafficking in children, as well as their exploitation and maltreatment, are strongly prohibited ...

8. The concerned authorities are in the process of completing the national laws and regulations in this regard, including the sport involving camel races ... It should be pointed out that a union has been set up recently; it includes all the clubs that practice this sport as a step towards regulating it.

9. We would like to clarify, in this regard, the circumstances in which the two boys from Bangladesh had beaten another boy in a dispute. This incident has no connection with camel races. It is a kind of quarrel that happens usually between individuals and the boys appeared in court and were entrusted to an institution for juveniles, and were handed to their legal guardians who undertook to give them protection and care.

10. The allegations made against the State were unfounded ...".

Analytical comment

225. The information provided by the various countries in the above communications is greatly appreciated, and government cooperation in providing responses is welcome.

226. According to the variety of information received, situations such as those involving children used in camel races, paedophilia and child prostitution/pornography still give rise to concern in the various regions where these practices are alleged to take place. Independent assessments and long-term monitoring at the national and local levels should help to clarify the issues at stake. These need to be coupled with the preventive and remedial measures identified in the recommendations submitted later in this report.

V. RECOMMENDATIONS

A. General

227. A number of recommendations were made in the previous report of the Special Rapporteur. The United Nations Commission on Human Rights, States and national and international organizations are invited to bear them in mind and facilitate their implementation and evaluation at the international and national levels.

228. Updated information on the areas of concern to this mandate should be collected consistently by all countries, and this should be sent to the United Nations Centre for Human Rights and relevant agencies and personnel for collation, analysis and dissemination. A national focal point should be identified and/or established for this purpose, and it should liaise effectively with the Special Rapporteur. Insufficiency of data should be overcome by the designation of a unit under the national focal point mentioned to gather relevant information and to make it widely available. Networking between governmental and non-governmental organizations and individuals on these matters should be encouraged.

229. More field visits to both developing and developed countries are essential to enable the Special Rapporteur to undertake the work under the mandate so as to ensure access to information at the local level.

230. Communications by the Special Rapporteur on behalf of children in difficulties should be promoted, and the States concerned should respond

effectively to these communications. They should also initiate independent investigations and long-term monitoring at the national level so as to complement the task of the Special Rapporteur.

231. States should accede to all the relevant human rights instruments and implement them effectively. In particular, they should accede to the Convention on the Rights of the Child and should enforce it fully at the national and local levels. The national focal point mentioned should gather information in the areas of concern to these instruments and should forward it regularly to the international human rights mechanisms, including the Special Rapporteur, mandated to deal with child-related issues.

232. The Commission on Human Rights should encourage dissemination of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, and the draft programme of action for the elimination of the exploitation of child labour to all States, national and international organizations, and the community at large. States should be requested to implement them and to report progress in this regard to the Human Rights Commission annually.

233. The Commission on Human Rights should initiate an intersectoral dialogue based upon the idea of a "development consortium for child rights" with all international agencies dealing with development aid and assistance which are related to the concerns of this mandate. These include the United Nations Children's Fund, the United Nations Development Programme, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organisation, the World Health Organization, the World Bank, the International Monetary Fund, and bilateral aid agencies. The aim would be to place more emphasis on child rights in all development strategies. This would be interlinked with development and other agencies at the national and local levels to enhance reorientations of development strategies, effective implementation and adequate budgetary and resource allocations.

234. The Commission on Human Rights should establish a "child-media action forum" with the world's mass media so as to encourage them to collect and disseminate information of concern to this mandate; this would help to render the invisible more visible and mobilize the general public to participate in protecting children.

235. The Commission on Human Rights should initiate a "pro-child-anti-crime network" with INTERPOL, national police, immigration and law enforcement authorities, and local community groups so as to be on guard against child abuse and exploitation, especially in the areas of relevance to this mandate. Each entity in this network should have a cell dealing specifically with the issues of sale of children, child prostitution and child pornography so as to promote consistent vigilance and correlative action.

236. The Commission on Human Rights should ensure that child rights considerations are placed high on the agenda of the forthcoming World Conference on Human Rights. The strategy would be to propel a "Global Family for Child Protection" to consolidate a broad cluster of initiatives to protect children in difficulties.

237. The Commission on Human Rights should encourage all States to establish and/or identify an "alliance for child protection" at the national and local levels so as to undertake a kind of "community watch" to identify and act against child abuse and exploitation. The alliance should include local leaders, religious organizations, representives of youths and children, non-governmental organizations, parental groups, the business sector, local media and concerned authorities.

238. The Commission on Human Rights should network with world military entities, governmental and non-governmental, so as to ensure that children are not used and abused in armed conflicts; they should be protected as a "zone of peace". This should be done in coordination with the world Red Cross and Red Crescent Movement and other humanitarian organizations.

239. The Commission on Human Rights should establish close contact with UNESCO, national and international educational organizations to initiate a "child rights programme" in all areas of formal and non-formal education. This would help to raise consciousness of child rights issues among children and older members of the public; it would also have a preventive impact in that knowledge will empower the target group to prevent or avoid forms of child abuse and exploitation.

240. The Commission on Human Rights should mobilize the business sector, including employers' federations, trade unions, entertainment enterprises, hotels and tourist agencies, and the World Tourist Organization to cooperate with it and promote a worldwide strategy for child protection. This may be done by adopting a "Business Code of Conduct for Child Protection" which would voice ways and means to prevent and eliminate child exploitation. Peer pressure exerted by the business sector would be an important element of social sanctions against actual and potential abusers.

241. In view of the forthcoming International Year for the World's Indigenous People and International Year of the Family, the Commisssion on Human Rights should collaborate with all States, national and international organizations to pay particular attention to the issues of sale of children, child prostitution and child pornography which may harm indigenous peoples and the family setting.

242. As the Special Rapporteur's work is being increasingly affected by technical and other constraints, support should be given to the mandate so as to ensure that it is able to function effectively.

B. Specific

243. States, national and international organizations are invited to bear in mind strategies of prevention, protection and rehabilitation in curbing the sale of children, child prostitution and child pornography. All three strategies involve short- and long- term planning, implementation and evaluation. Of the three strategies, the most immediate, in the short term, is that of protection: adequate laws, policies and enforcement can have instant impact on the situation, given the political and social will to make it a reality. This is all the more significant because the scenario at stake is criminality, and it is only through effective law enforcement that this

will be reduced in the short term. Realizable goals depend upon close coordination and adequate budgetary allocations between the national and local levels, including federal and state links.

1. Prevention

244. A key priority for action is in the area of prevention. This is often dependent upon effective anti-poverty strategies, access to improved information flow, education, community consciousness-raising and mobilization, satisfaction of basic needs, occupational opportunities and alternative forms of employment.

245. As many forms of sale of children, child prostitution and child pornography are related to family decline and disintegration, measures to bolster the family system are required. These may include social assistance facilities and family/child subsidies.

246. As an essential root cause of child exploitation is criminality, anti-crime measures should be broadened and community participation to take precautions to protect children as part of a "community watch" programme should be maximized. These are linked to more effective protection of children, as stated below.

2. Protection

247. Protection of children from abuse and exploition depends upon effective laws and policies, and their implementaion at the national and local levels. As all countries already have laws which can be used to protect children, e.g., the criminal law, these should be implemented in a more committed manner. Where there are legislative loopholes, States should consider the possibility of adopting specific laws against the sale and trafficking of children, child prostitution and child pornography.

248. In many parts of the world, the quality of the police force, immigration authorities, judges, inspectors and other law enforcement authorities needs to be improved. Low pay and insufficient training in child rights often result in poor law enforcement and corruption. The better parts of these authorities need incentives and in-service training for quality performance. The worst parts of such entities need to be identified and penalized for being part of the criminal system.

249. The responsibility of the customer or consumer in child abuse and exploitation needs to be highlighted. This implies, for example, incriminating customers of child prostitutes and those possessing child pornography.

250. In view of the malpractices of those who go abroad to commit crimes against children in other countries, particularly as part of sex tourism, the criminal jurisdiction of the countries of origin should be extended to cover the acts of their nationals even when perpetrated abroad.

251. Improved links between INTERPOL and national police are required to identify transnational networks which abuse and exploit children. The

national police in all countries should have a special policy and unit to tackle child abuse and child exploitation.

252. Community groups, including child and youth groups, should be promoted as part of a "community watch" programme and a participatory approach to forewarn of the violations which may take place, as well as to identify and report abuses and exploitation of children.

253. States should encourage, through bilateral and other means, exchange programmes among law enforcement authorities, as well as related training programmes, to deal with transnational trafficking in children. This may, for example, entail stationing police personnel in other countries to track the behaviour of their own nationals where there is a threat to the children of such countries. This can be facilitated by increased exchange of information, such as lists of known paedophiles and crime-linked data.

254. As the sale of children, child prostitution and child pornography are at times transnational, extradition arrangements should be expanded so as to facilitate the transfer of alleged criminals to face charges in the country where the abuse has taken place.

3. Rehabilitation

255. Remedial action should be taken to help children who are abused and exploited. This may include judicial remedies, such as prosecution of abusers, coupled with legal aid and assistance and/or socio-medical remedies such as hospices, counselling and other support facilities.

256. Particular attention should be paid to child trafficking between different countries. This entails proper safeguards for them to return to their countries of origin. Bilateral and other links to ensure such return need to be evaluated by independent monitoring.

257. Facilities should be provided to help those with health problems including HIV and AIDS. These may include medical and community facilities to help the children and their families, as well as measures to protect them against discrimination and other harm.

258. The psychological pattern of paedophiles needs to be researched more deeply. This may necessitate medical and psychiatric facilities for those of aberrant behaviour rather than criminal sanctions per se.

4. Sale of children

259. Bearing in mind the need to link measures of prevention, protection and rehabilitation, support should be given to the efforts to finalize the convention on inter-country adoptions. Accession to existing instruments at the regional and international levels, including The Hague Convention on the Civil Aspects of International Child Abduction, should be promoted. Competent authorities in and between countries should be established so as to facilitate return of a child who has been abducted.

260. More cooperation between the police and immigration authorities should be promoted to prevent abuses in inter-country adoptions. This may include the screening of applicants for visas and exchanges between consular officials of the sending and receiving countries.

261. Facilities should be provided for counselling, matching of adoptive parents and children, and monitoring of adoptions, with consistent follow-up.

262. Local adoption possibilities should be explored before inter-country adoptions are resorted to, and national laws and policies should provide safeguards against the operations of unscrupulous independent adoption agencies and intermediaries which may give rise to the sale of children. As children have a right to an identity, they should be entitled to trace their origins and have access to records concerning information about their biological parents.

263. Development aid and assistance, coupled with occupational opportunities, should be given to the biological parents so as to enable them to retain their children instead of giving them up because of poverty.

264. In the case where parents are found to have sold their children for adoption there should be social service personnel to monitor the conduct of such parents if their children are returned to them. This may need to be coupled with counselling facilities and support systems so as to create a greater sense of responsibility on the part of the parents towards their children.

265. There should be a registry and a central authority in each country to coordinate both local and inter-country adoptions. This authority would be responsible for registration of adoption agencies and ensure that improper practices do not arise.

266. In relation to child labour, an integrated and multidisciplinary approach is necessary to help child labourers and their families. This should include educational access and flexible school hours for children, family subsidies and occupational opportunities.

267. There should be stricter law enforcement in the case of child labour law, with more incentives for exemplary law enforcement personnel. All vestiges of bondage should be eradicated, and the plight of the girl child should be attended to.

268. There should be greater protection of illegal or undocumented migrant child labourers. They should only be sent back to their country of origin if their safety and human rights are guaranteed. This should be seen in the setting of relevant international standards on the rights of migrant workers.

269. More emphasis should be placed on the plight of children used in domestic labour; laws may be required to prevent abuse in this field.

270. Greater vigilance is needed in regard to the sale of children for organ transplantation. Countries should ensure that there are local laws which prohibit the sale of organs and which are implemented effectively. The

medical sector should also adopt a code of medical ethics along the lines of the World Health Organization's Guiding Principles on Human Organ Transplantation and practise it strictly.

271. Laws, policies and a medical code of ethics are required to prevent commercialization of in vitro fertilization and surrogacy. The close cooperation of the medical sector should be sought in laying down the rules for these practices. Bilateral and transfrontier arrangements are also required to prevent "forum shopping" for services which give rise to abuses.

272. States should raise the age of conscription to 18 and prohibit use of child soldiers below that age. When child soldiers are captured in combat, their prisoner of war status has to be respected. A dialogue with the military of both governmental and non-governmental forces is needed to curb the use of child soldiers. In promoting adherence to international human rights instruments and principles, safeguards are needed for all children in armed conflict situations.

273. A central registry for missing children should be set up in every country, and transfrontier exchanges of information to trace children should be promoted.

5. Child prostitution

274. An integrated and multidisciplinary approach is advocated to tackle the child prostitution problem, bearing in mind the programme of action referred to above under the auspices of the Commission on Human Rights. National laws may need to be reformed to extend jurisdiction to encompass the misdeeds of the country's nationals against children in other countries.

275. Assistance is needed for both families and children so as to lift them out of the rut of poverty that drives children into prostitution or that pushes parents to sell their children. Monitoring of parental behaviour, supervision by social service personnel, occupational facilities, family subsidies and educational access are required to encourage changes of conduct on the part of parents and to protect the children.

276. Where they do not already exist, there should be laws and policies to incriminate the conduct of customers and intermediaries in the case of child prostitution. Peer-group pressure among members of the private sector may also be explored.

277. Migrant child prostitutes should be protected from harm, whether or not they have entered the country illegally. Help should be given to provide education and alternative occupations. Their safety and human rights need to be ensured, with proper monitoring, if they are to be sent back to their country of origin.

278. No discrimination or inhumane action should arise against child prostitutes with HIV or AIDS. Support facilities, including subsidies, medical care and accommodation should be promoted.

279. More attention should be paid to transnational trafficking in children and its link with criminal networks. Bilateral and other forms of cross-frontier cooperation, with the help of INTERPOL, are desirable in order to apprehend the culprits.

280. Sex tourism should be discouraged and the service sector, including tourist agencies, should act more responsibly on this issue. The World Tourism Organization's role has yet to be maximized in this regard; it should promote a code of ethics among tourist agencies to prevent child exploitation.

281. Incentives should be accorded to non-governmental organizations and community initiatives, including tax exemptions, in relation to programmes servicing children and their families.

282. Exchange of lists of paedophiles between different countries should help to prevent repetition of offences by the same person, and should be encouraged.

283. Traditions which perpetuate child prostitution should be changed, not only through legislative enactments, but also through a broader educational base and consciousness-raising. At times, financial inducements may also be used to inculcate constructive changes of behaviour to help the child.

284. The issue of child prostitution should be raised more openly in the classroom so as to forewarn children of the dangers. This is particularly important at the primary level of education, as many children do not carry on their education to the secondary level, for lack of funds, but enter the labour market under the impending threat of exploitation.

6. Child pornography

285. The Programme of Action referred to earlier should be implemented fully at the national level. Laws should be amended to address the advent of new technology which could otherwise be used for child pornography. They may also be extended to cover crimes committed by the nationals of a country against children in other countries.

286. Customer responsibility should be promoted, as in the case of child prostitution. This would mean incriminating possessors of child pornography in addition to those who produce and circulate it.

287. Medical as well as legal remedies should be applied to cases of child pornography. Counselling and rehabilitation may be needed for both the abused and the abuser.

288. The police, customs officials and postal officials need to coordinate their efforts more closely to curb the circulation of pornographic materials through bilateral and other arrangements.

Notes

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2/ Draft articles of a convention on international cooperation and protection of children in respect of inter-country adoptions (The Hague: The Hague Conference on Private International Law, 1991).

3/ Report of the Regional Expert Meeting on Protecting Children's Rights in Inter-country Adoptions and Preventing Trafficking and Sale of Children (Manila, April 1992). (Geneva: Defence for Children International (DCI), 1992.)

4/ DCI, Romania: The Adoption of Romanian Children by Foreigners (Geneva: DCI, 1991).

5/ International Children's Rights Monitor, 9 (2) (1992), p. 23.

6/ Children's Rights International (CRI), Children without Childhood: Violations of Children's Rights in Guatemala (Swarthmore, Penn., CRI, 1990), p. 17.

7/ Report of Americans for Open Record (AMFOR), submitted to the Special Rapporteur in 1992.

8/ Ibid.

9/ The following countries have ratified The Hague Convention on the Civil Aspects of International Child Abduction: Argentina, Australia, Austria, Canada, Denmark, France, Germany, Ireland, Israel, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States, Yugoslavia. The full accession of Mexico took place in 1991.

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13/ G. Pradhan, "Girl Child in Nepal: A Neglected Majority", Voice of Child Worker, 10 (March 1991), p. 3.

14/ "Situation of Working Children in the Philippines", Paper presented at the 3rd Child Workers in Asia Consultative Meeting (Bangkok, 25-28 March 1992), p. 3.

15/ Pu Ngai, "Child Labour in the People's Republic of China", Paper presented at the 3rd Child Workers in Asia Consultative Meeting (Bangkok, 25-28 March 1992), p. 4.

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19/ S. Williams, Child Workers in Portugal (London: Anti-Slavery International, 1992).

20/ WHO, Human Organ Transplantation (Geneva: WHO, 1992), p. 7.

21/ Ibid., pp. 7-9.

22/ Report of the First Meeting of the Working Group on Organ Transplantation (Strasbourg, 8-10 January 1992) (Council of Europe, 1992).

23/ Ibid., p. 10.

24/ "The Organs Bazaar", India Today (31 July 1990), p. 33.

25/ "India outlaws trade in human organs", British Medical Journal (23 May 1992), p. 1333.

26/ International Children's Rights Monitor, op. cit., p. 12.

27/ See further Children of War: Report of the Raoul Wallenberg Conference (Stockholm, 31 May-2 June 1991)

28/ M. T. Dutli, "Captured Child Combatants", International Review of the Red Cross (September 1990), p. 278.

29/ N. Boothby, A. Sultan & P. Upton, Children of Mozambique: The Cost of Survival (Washington: United States Committee for Refugees, 1991), p. 6.

30/ R. M. Ressler, J. M. Tortorici & A. Marcelino, Children in Situations of Armed Conflicts (UNICEF, forthcoming), p. 117.

31/ Children Worldwide 19 (2) (1992), p. 40.

32/ See R. O'Grady (ed.), Children in Prostitution: Victims of Tourism in Asia (Bangkok: End Child Prostitution in Asian Tourism, 1992).

33/ People of the Philippines v. H.J. Ritter, case No. 88582 (5 March 1991).

34/ Children in Prostitution: Victims of Tourism in Asia, op. cit., p. 61.

35/ G. Pradhan, op. cit., p. 25.

36/ The Flesh Trade (Karachi: Lawyers for Human Rights and Legal Aid, 1991).

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38/ Ibid., p. 37.

39/ Beyond Rhetoric: A New Agenda for Children and Families, Final Report on Children (Washington, 1991) p. 284.

40/ I. Walz, "We Demanded Political Action", in Children in Prostitution: Victims of Tourism in Asia, op. cit, p. 16.

41/ Report of the 1st International Symposium on Offences against Children and Young Persons (Lyons, 7-9 April 1992) (INTERPOL, 1992), pp. 5-6.

42/ Ibid., p. 3.

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44/ Children in Prostitution: Victims of Tourism in Asia, op. cit., p. 58.

Annex I

LIST OF STATES WHICH HAVE SENT REPLIES TO THE QUESTIONNAIRE ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY CIRCULATED BY THE SPECIAL RAPPORTEUR IN 1991*

Algeria
Australia
Austria
Bahamas
Bangladesh
Barbados
Brazil
Burkina Faso
Canada
Chad
Chile
Colombia
Côte d'Ivoire
Cuba
Dominica
Ecuador
Egypt
Ethiopia
Germany
Greece
Holy See
Honduras
Indonesia
Italy
Japan
Jordan
Kenya
Malaysia
Malta
Mauritius
Morocco
Myanmar
Pakistan
Paraguay
Philippines
Poland
Qatar
Rwanda
Senegal
Sierra Leone
Spain
Switzerland
Syrian Arab Republic
United States of America
Uruguay
Zimbabwe

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* For the text of the questionnaire, see E/CN.4/1992/55, Annex I.

Annex II

QUESTIONNAIRE RELATING TO THE SALE OF CHILDREN'S ORGANS
CIRCULATED BY THE SPECIAL RAPPORTEUR IN 1992

Interpretation of certain terms used in the questionnaire

For the purpose of this questionnaire, the term:

"Child" is defined by the United Nations Convention on the Rights of the Child 1990 as meaning "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier";

"Sale of children" should be seen as a flexible term due to the different notions of "sale" and "contracts" in existing municipal systems, noting a definition derived from the 1956 Supplementary Convention on the Abolition of Slavery, as follows: "The transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation";

1. Is your country a party to the multilateral instruments concerning the prevention and elimination of the sale of children (e.g., the 1956 Supplementary Convention on the Abolition of Slavery, the 1990 Convention on the Rights of the Child, and various instruments of the International Labour Organisation)?

2. How effective is the implementation of these instruments at the local level? Please assess strengths and weaknesses.

3. To what extent is the prevention and elimination of the sale of children, dependent upon international development strategies and agencies? How should more effective collaboration and interaction be promoted?

4. Does your country have any bilateral and regional arrangements with other countries to prevent and eliminate the sale of children in relation to organ transplantation? Please give examples.

5. The sale of children is mainly carried out for the purposes of organ transplantation. To what extent, and in what ways and forms, do these violations of children's rights exist in your country? Please describe.

6. What are the root causes of the sale of children in your country, if it exists?

7. What obstacles or problems hamper the prevention and elimination of the sale of children, in particular organ transplantation?

8. What measures and action (e.g., national children's policies; projects to help children and their families; incentives for better law enforcement; community watch; participation of governmental institutions, non-governmental organizations and the private sector, etc.) have been or are being taken to prevent and eliminate the sale of children? Please give examples and assess strengths and weaknesses.

9. What national laws exist to prevent and eliminate the sale of children in relation to organ transplantation? Please give name of law, date and reference; attach texts if possible.

10. How effective are such laws and what are the sanctions? Please assess strengths and weaknesses.

11. Have there been any prosecutions where the sale of children relates to organ transplants? Please give details and statistics.

12. Do national development plans, national youth/child policies or other national programmes explicitly mention specific targets and action to prevent and eliminate the sale of children in relation to organ transplantation?

13. How are they implemented? Please assess strengths and weaknesses.

14. Please give examples of measures and action (e.g., programmes, projects) to implement these plans.

15. How much budget is available for these measures and action? Is it sufficient?

16. Who are the counterparts/partners in the implementation of these plans (e.g., governmental, non-governmental, community, children, etc.)?

17. How are these plans evaluated? Who evaluates, and is there follow-up action?

18. What other resources and measures are required to make these plans effective in practice?

19. Are there laws, policies, measures and budgets (e.g., development aid, social welfare) to help those families who are at risk of becoming, unknowingly or involuntarily, involved in the sale of children?

20. Are there laws, policies, measures and budgets (e.g., development aid, social welfare) to help raise the status of women/girls who would otherwise be involved in the sale of children?

21. Are there laws, policies, measures and budgets (e.g., development aid, social welfare) to prevent customers/consumsers from becoming involved in the sale of children? Are there sanctions against those who are involved in exploiting children in these ways?

22. Are there laws, policies, measures and budgets to prevent the business sector (e.g., tourist industry, factory owners, film industry, etc.) from undertaking or becoming parties to the sale of children? Are there sanctions against those who are involved in exploiting children in these ways?

23. Are there laws, policies, measures and budgets to help law enforcement personnel prevent and eliminate the sale of children? Are there sanctions against those who abuse their powers? Are there incentives (e.g., better pay) for those who do their duty well?

24. Are there laws, policies, measures and budgets to help non-governmental organizations prevent and eliminate the sale of children?

25. Are there laws, policies, measures and budgets to help community institutions and personnel, e.g., religious groups, youth/children's groups, village leaders, prevent and eliminate the sale of children?

26. Are there laws, policies, measures and budgets to help the mass media prevent and eliminate the sale of children?

27. Are there laws, policies, measures and budgets to help professional groups and associations (e.g., medical associations, law associations) prevent and eliminate the sale of children?

28. Is legal aid and assistance available to the families, legal guardians or representatives of child victims of sale? Please give examples and assess strengths and weaknesses.

29. Are there public and/or private rehabilitation programmes and measures for victims of the sale of children? Please give examples and assess strengths and weaknesses, including positive and negative effects on the children. Please give suggestions as to how these programmes could be improved.

30. Are there public and/or private rehabilitation programmes and measures for exploiters and abusers of children, especially if there are psychological reasons for their misconduct? Please give examples and assess strengths and weaknesses.

31. To what extent is the issue of the sale of children dealt with in formal education (e.g., primary, secondary and tertiary levels)? Please describe the substance and form (e.g., whether it is taught as part of existing courses).

32. To what extent is the issue of the sale of children dealt with in non-formal education (e.g. out-of-school programmes and via television/radio)? Please give examples.

33. How active are the mass media in collecting and disseminating information on these matters?

34. Is there a data-gathering institution/mechanism on these matters? Please give examples of the types of information gathered, strengths and weaknesses.

35. What is the current state of research on these matters? What has been done and what is needed?

Please add any further suggestions and recommendations. Please supply texts of documents referred to, wherever possible.

Annex III

LIST OF STATES WHICH HAVE SENT REPLIES TO THE QUESTIONNAIRE ON THE SALE OF CHILDREN'S ORGANS CIRCULATED BY THE SPECIAL RAPPORTEUR IN SEPTEMBER 1992

Australia
Austria
Brazil
Bulgaria
Burundi
Chile
China
Colombia
Cuba
El Salvador
Holy See
Iraq
Jordan
Norway
Poland
Rwanda
San Marino
Spain
Singapore
South Africa
Sudan
Sweden
Switzerland
Thailand